

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 894

**J. F. LAWRENCE, C. C. TAYLOR, EDWIN DABNEY,
ATTORNEY GENERAL, ETC., ET AL, APPEL-
LANTS,**

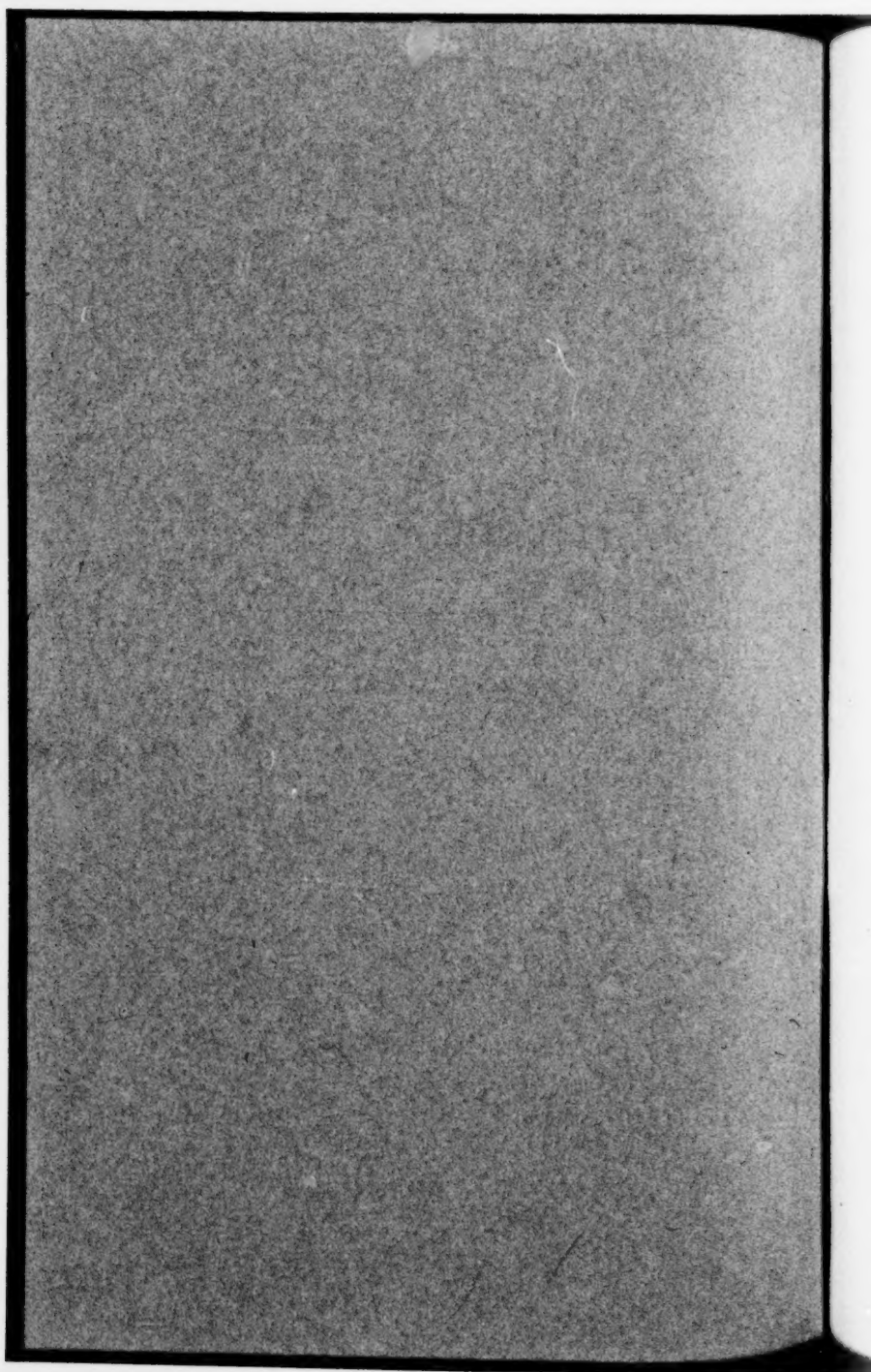
vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

FILED FEBRUARY 19, 1927

(32,461)



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[fol. 1]

**IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF OKLAHOMA**

No. 207 E

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff,

VS.

J. F. LAWRENCE, C. C. TAYLOR; EDWIN DABNEY, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants.

BILL OF COMPLAINT—Filed January 11, 1927

To the Honorable Judge of the District Court of the United States for the Northern District of Oklahoma:

The St. Louis-San Francisco Railway Company, plaintiff, a corporation created and organized under and by virtue of the laws of the State of Missouri, having its principal place of business at St. Louis in said State of Missouri, brings this bill of complaint against J. F. Lawrence and C. C. Taylor and Edwin Dabney, Attorney General of the State of Oklahoma, and Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and thereupon plaintiff alleges and states:

I

That the St. Louis-San Francisco Railway Company is a corporation duly organized under and by virtue of the laws of the State of Missouri, with its principal place of business in the City of St. Louis, in said State, and is a citizen and resident of the State of Missouri, and is not a citizen or [fol. 2] resident of the State of Oklahoma, and that said railway company is authorized, as provided by law, to transact business in the State of Oklahoma; that its rail-

road is engaged in both intrastate and interstate commerce, and that it operates such railroad in the States of Missouri, Kansas, Arkansas, Oklahoma, Texas, Mississippi and other States, and that for many years it has owned and operates lines extending from Kansas City and St. Louis, by continuous lines, to and through the State of Oklahoma, and through the City of Sapulpa, located in said State of Oklahoma and the Northern Federal Judicial District thereof.

II

That Edwin Dabney is a citizen and resident of the State of Oklahoma and the Western Federal Judicial District thereof, and is the duly elected, qualified and acting Attorney General of the State of Oklahoma; that Frank C. Carter, Fred Capshaw and C. C. Childers are citizens and residents of the State of Oklahoma, and of the Western Federal Judicial District thereof, and are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma; that J. F. Lawrence and C. C. Taylor are citizens and residents of the State of Oklahoma and the Northern Federal Judicial District thereof, living in the said City of Sapulpa in said Northern Federal Judicial District.

III

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of \$3,000.00, and that plaintiff's cause of action as hereinafter shown arises under the Constitution and laws of the United States, and especially under Section 8, Article 1 of said Constitution, which provides in substance that the Congress of the United States shall have power to regulate commerce among the several states, and under the Fourteenth Amendment to said Constitution, which provides that no state shall deprive any person of his property without due process of law nor deny that person the equal protection of the laws.

[fol. 3]

IV

That during the month of February, 1917, defendants, J. F. Lawrence and C. C. Taylor, appearing on behalf of themselves, the Chamber of Commerce of the City of

Sapulpa, and the citizens of said City of Sapulpa, filed complaint with the Corporation Commission of the State of Oklahoma, which had for its purpose the prevention of this plaintiff from moving its said shops and division point from the City of Sapulpa to the City of Tulsa on its said line of railroad; that thereafter and on the 15th day of February, 1917, Order No. 1232 was issued by the Corporation Commission of the State of Oklahoma, temporarily restraining plaintiff from moving its said shops or division point from the City of Sapulpa to the City of Tulsa, or doing any act relative thereto; that on the 29th day of December, 1926, upon application of said defendants, J. F. Lawrence and C. C. Taylor, appearing for themselves and for the Chamber of Commerce of the City of Sapulpa and for the citizens of said City, the Corporation Commission of the State of Oklahoma made and caused to be served upon this plaintiff Order No. 3699, which reads as follows:

"This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains, or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa.

"It is further ordered that a copy of this order be served on the defendant.

"Done at Oklahoma City, Oklahoma, on the date first above named."

That a hearing on said complaint filed by said defendants as set forth in said order, is set before the Corporation Commission of the State of Oklahoma for the 17th day of January, 1927.

V

[fol. 4] That the Statute of the State of Oklahoma referred to in the above named order as "the Act of the Legislature passed in 1917", and all the Statutes of the State of Oklahoma relied upon by said defendants for the jurisdiction of said Corporation Commission in said action, are contained in Compiled Oklahoma Statutes, 1921, as follows:

"3482. Removal—Permit.—That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. Corporation Commission—Jurisdiction.—If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. Hearing—Before Corporation Commission.—When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the ade-

quacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employees of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employees of said applicant or their families, the Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

[fol. 5] "3485. Proof—Burden Upon Applicant.—On any such hearing, as provided in this act, the presumption shall be against the removal, and the burden of proof rest upon the applicant to show that such removal ought to be made.

"5548. Transportation Companies Must Maintain Repair Shops in State.—Transportation companies operating within this State which now have in existence round-houses or machine shops for the repairing of locomotives, engines, and cars, or which may hereafter establish such round-houses or machine shops for such purpose, shall hereafter maintain such shops and round-houses with sufficient equipment and employees to keep in proper repair all rolling stock, locomotives, engines, and cars used within this State in the transportation of passengers and freight and such transportation companies shall hereafter cause all such rolling stock, locomotives, engines and cars to be repaired at such shops or round-houses and kept in a safe and serviceable condition and no such repair shall be done outside the State of Oklahoma, if such repairs can be done at such company's shops within this State."

VI

Premises considered, plaintiff complains of such jurisdiction and injunctive action on the part of said Corporation Commission, because the foregoing Statutes upon

which the Commission seeks to base its jurisdiction are unconstitutional and void, and said Commission therefore is without power to act under said Statutes, in that they are not a proper exercise of the police power of the State and deprive plaintiff of due process of law and of equal protection under the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff shows to the court that such Statutes are arbitrary, unreasonable and unnecessary, because neither the shipping public, the traveling public nor the public at large has any interest in the place where railroad shops or division points shall be located on said railway company's lines; that the location of said shops or division point does not serve to protect the public morals, the public safety or the public health, and the right of the State of Oklahoma to enact such Statutes cannot be traced or referred to any legitimate or well known source of police power. Such Statutes are arbitrary, unreasonable and unnecessary, and are an un-[fol. 6] due and unconstitutional interference with the right of a railway company to manage its property and operate it for the best interests of the public and the stockholders of such company, and to operate the same economically, which, by law, it is required to do, and at the least expense necessary to serve the public, and are, therefore, an invasion of the rights of such company prohibited by law and the Constitution of the United States as aforesaid.

VII

That said Statutes are unconstitutional for the further reason that said sections show on their faces that they were enacted purely to serve local interests and not to serve the public, and this regardless of whether they injuriously affect the property of the railway company and interfere directly with interstate commerce.

VIII

Plaintiff says that said sections of the Statutes, taken together, declare that if division points or shops have been located in any particular place in the State of Oklahoma for a period of five years, the presumption against the right

of removal shall obtain against the railway, and that the burden of proof shall be upon the railway. Plaintiff says that such provision in such sections is unconstitutional in that it is an arbitrary exercise of police power; that the five-year period as announced in said provision has no just relation to the proposition as to whether the right of removal exists and that the change in the rules of evidence by virtue of said five-year period is unconstitutional, in that it deprives the plaintiff of its property without due process of law and of the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff, therefore, alleges that the Corporation Commission aforesaid has no power or jurisdiction to act in the premises under said unconstitutional Statutes, nor to issue its injunctive process against this plaintiff prohibiting it from removing its shops, division point and appurtenances thereto from the said City of Sapulpa, without obtaining the consent of such Commission.

IX

Plaintiff further says that said Statutes are unconstitutional, void and of no effect for the reason that same purport to grant to the Corporation Commission authority to decide questions relative to, and to directly regulate, interstate commerce, and that if said Corporation Commission is given such authority by said Statutes in said proceedings pending before said Commission, such decision will, in effect, regulate the interstate commerce business of this plaintiff.

X

Plaintiff further shows to the court that said Statutes are unconstitutional, void and of no effect in so far as same are applicable to said purported action pending before the Corporation Commission of the State of Oklahoma, for the reason that the question as to whether or not plaintiff be permitted to remove its shops and division point to the City of Tulsa, or be compelled to continue said shops and division point at the City of Sapulpa, is, by reason of the facts hereinbefore related, one directly affecting interstate commerce, and a decision of said question by said Corporation

Commission will be a direct regulation of interstate commerce, and if said removal is prevented by the order of said Corporation Commission, then said order will be a direct burden upon and a direct regulation of and interference with interstate commerce.

XI

That on or about the 1st day of January, 1927, plaintiff prepared and published its train schedule, changing the run of certain of its interstate passenger trains operated by defendant for the purpose of carrying interstate passengers, interstate express and interstate United States mail, by providing therein that said trains run from Oklahoma City to Tulsa and change crews at Tulsa, and from Fort Scott, Kansas, to Tulsa, and change crews at Tulsa, and from Monett, Missouri, to Tulsa, and change crews at Tulsa; that said schedule was prepared and published by [fol. 8] plaintiff after mature study and deliberation in an effort to promote, change and regulate its interstate commerce business. Plaintiff says that said schedule, if put into effect, will greatly facilitate and promote the interstate commerce business transacted by plaintiff; that owing to the increase in business transported over plaintiff's line of railroad and the recent change in the equipment and motive power used by plaintiff and the improvement thereof, and owing to a general scheme recently adopted by plaintiff with relation to its interstate commerce business involving changes in the location and even the elimination of various division points throughout plaintiff's system of railway in the States of Missouri, Kansas, Oklahoma, Texas and other States, it has become necessary and imperative to the proper conduct of plaintiff's interstate business that said changes in said runs be made; that the order of the Corporation Commission hereinafter referred to prevents plaintiff from putting into effect its said schedule with reference to its said interstate trains, and is a construction by the Corporation Commission of the above named Statutes to the effect that said Statutes grant to said Commission the power and duty to regulate interstate commerce.

XII

Plaintiff says that the restraining orders heretofore issued by said Corporation Commission as hereinbefore set forth are void and of no effect for the reason that said orders attempt to regulate and interfere, and do regulate and interfere with the running of interstate trains; that said orders interfere with this plaintiff materially in the management and operation of its said interstate trains, and are unreasonable, unnecessary and constitute a burden upon interstate commerce and are unconstitutional and void.

XIII

Plintiff would further show to the court that the above named Statutes as construed by the Corporation Commission of the State of Oklahoma, in their application to the questions herein involved, are unconstitutional, confiscatory [fol. 9] and void by reason of the particular facts applicable to this case. In this connection plaintiff would show to the court, as follows:

(a) That more than thirty years ago the St. Louis & San Francisco Railroad Company built and acquired lines of railroad extending from the cities of St. Louis and Kansas City to Afton, Oklahoma, at which point said lines of railroad united and extended in a single line in a south-westerly direction into the State of Oklahoma and the cities of Tulsa and Sapulpa in said State, and thereafter built lines of railroad extending south from the said City of Sapulpa into the State of Texas to the City of Sherman in said State, and a line of railroad extending west from said City of Sapulpa, through Oklahoma City, Lawton and to the City of Quanah in the State of Texas; that owing to the character of the roadbed constructed by said railroad company and the character of motive power and equipment at said time necessarily used by said railroad company, it became and was necessary and convenient in the transaction of the business of said railroad company that division points be located on said railroad at a distance of not to exceed one hundred miles from each other; that owing to the relative size of the different cities through

which said lines of railroad passed, and owing to the fact that at the times of the construction of said lines of railroad as heretofore described, said railroad company received a large volume of its business from the vicinity of Sapulpa, and owing to the further fact that it appeared to those having to do with the construction of said lines of railroad at said times that the City of Sapulpa would become the business shipping center of its locality, said railroad company located, built and constructed at the said City of Sapulpa certain railroad shops and a division point on said lines of railroad, and that said shops and division point have since been maintained and operated at the said City of Sapulpa.

(b) That heretofore and on the 1st day of November, 1916, this plaintiff became the owner by purchase of the above named lines of railroad and railroad shops and has [fol. 10] since owned and operated same.

(c) That although from the conditions existing at the time of the construction of said lines of railroad it appeared to those having to do with the construction of same that it would be to the best interest of said railroad and the shipping public that certain railroad shops used in connection with said lines of railroad and a division point thereon be located at the City of Sapulpa, and that the City of Tulsa would be of minor importance as a railroad and shipping center, conditions have so changed as to make it imperative on the part of the operators of said lines of railroad to locate extensive shops and yards at the City of Tulsa, and at a point therein known as West Tulsa, and to move said division point from the City of Sapulpa to the said City of Tulsa; that at the time of the construction of said lines of railroad, the City of Tulsa was comparatively small, and it appeared to those constructing said lines of railroad that the City of Sapulpa would develop into a large city and an important shipping center, and that Tulsa would remain a comparatively small town and its shipping interests would be of minor importance, but notwithstanding said appearances, the City of Tulsa has developed into a city of approximately 125,000 inhabitants, and has become one of the largest, if not the largest, shipping centers in the State of Oklahoma; that

plaintiff now owns and operates and has for many years owned and operated a line of railroad extending in a northwesterly direction from said City of Tulsa through the cities of Pawnee, Perry and Enid, and that said line of railroad has for many years brought a great volume of freight and passenger business into the said City of Tulsa; that immense oil fields and oil properties have been developed and constructed and are being operated in the vicinity of and in all directions from the said City of Tulsa, and the said City of Tulsa has become the center of said operations; that other industries, transacting great volumes of business, have been located and are now being operated in the said City of Tulsa and in the vicinity thereof, and that said industries use the said City of Tulsa as their shipping center; that the City of Sapulpa has developed only to a very minor degree; that the population of said City at this time is approximately 20,000 people; that very few of the industries operated as hereinbefore set forth, use the City of Sapulpa or the terminals of said lines of railroad located thereat as a shipping [fol. 11] center.

(d) That at the time of the location of said shops and division point heretofore described at the said City of Sapulpa, it appeared to those having to do with the construction and operation of said lines of railroad at said times, that the topography of the ground in the vicinity of said yards and said shops would permit the location and construction thereat of sufficient facilities for the transaction of all shipping business necessary to be transacted at the shops and division point located in that vicinity, but plaintiff shows to the court that owing to the great increase in the volume of business which must be transacted at the shops and division point located in said vicinity, and owing to the fact that the shops and yards as now located at said City of Sapulpa are hemmed in by the business houses of the City of Sapulpa on the south of said yards and shops, and by a great hill immediately adjacent to said shops and said yards on the north thereof, and owing to the further fact that said shops and said yards are located on a decided curve in the right of way of plaintiff at said point, it has been and will continue to be impossible for this plaintiff to construct at said point suffi-

cient shops and yards to transact the business necessary to be transacted at the division point shops and yards which must be located in said vicinity or in the vicinity of the City of Tulsa.

(e) That at the time of the construction of said railroad lines as hereinbefore set forth, owing to the condition of the roadbed, the character of the motive power, engines and other equipment, it was necessary for the proper conduct of the business transacted by said railroad company to locate division points and large shops at points not to exceed one hundred miles from each other, but in recent years the condition of the roadbed, bridges, etc., has been improved to such an extent, the motive power used by those operating said lines of railroad has been increased to [fol. 12] such an extent, the engines and other equipment used in the transaction of said business have been enlarged to such an extent that at this time it is necessary to the proper conduct of said business to increase the distances between the division points and large shops, and it has become and is necessary to remodel the plans of operation of said railroad lines, in that the division points and shops be located much farther apart, and that longer runs be made by crews in charge of said railway company's trains; that in carrying out this necessary scheme, it is necessary to locate the shops and division point to be located in the vicinity of Sapulpa and Tulsa, at the City of Tulsa.

(f) That this plaintiff is now and has been at all times mentioned in this complaint engaged extensively in interstate commerce; that all trains running through the yards and division point described herein are engaged in interstate commerce; that both the switch and road engines used by plaintiff in and through said yards and shops are constantly engaged in interstate commerce; that there is seldom a train movement made in the vicinity of said shops that has not for its purpose the furtherance of plaintiff's interstate commerce business; that a large proportion of the shipments hereinbefore mentioned originating at and passing through the City of Tulsa, are shipments destined to points outside the State of Oklahoma, or shipments passing through the State of Oklahoma, or shipments from points outside the State of Oklahoma, destined to points within

the State of Oklahoma; that plaintiff with its said lines of railroad is engaged in an extensive interstate railroad business, carrying a large volume of commerce, both freight and passenger, from Kansas City, Missouri, and points north and east, to Tulsa and other points within the State of Oklahoma, and to points south in the State of Texas, and from St. Louis, Missouri, and points north, east and south to Tulsa, and other points within the State of Oklahoma, and points in other states to the south; that the facilities and equipment constituting the shops and division point herein described, are necessary and imperative to the transaction of said interstate business, and are now [fol. 13] being and have for a long time been used extensively in the carrying on of said business.

(g) That those of plaintiff's officers and managers having to do with the management of its business, have, after mature consideration and deliberation, decided that it is to the best interest of the shipping public, passengers, and those having business with said railway company, and to the best interest of plaintiff that its railway shops and division point now located at the City of Sapulpa, be moved therefrom to the City of Tulsa and located therein at a point commonly known as West Tulsa and consolidated with the shops and yards now located at said point, and that such removal will greatly promote, accommodate and aid plaintiff's interstate commerce business; that as a result of its declaration of its intention to remove its said shops and division point, the actions on the part of defendants hereinafter complained of, were taken.

(h) That a removal of its shops and division point from Sapulpa to Tulsa, a distance of about eighteen miles and a consolidation of said shops with the shops now located at the City of Tulsa, as hereinbefore described, will enable plaintiff to promote and aid its interstate commerce business by eliminating annually hundreds of thousands of dollars of operating expense; that among many other items, plaintiff, if permitted to execute its said plan of removal, will be able to save in wages of employes approximately \$200,000.00, per annum; in operating material and equipment, approximately \$70,000.00 per annum; in fuel, power and lights, approximately \$25,000.00 per annum; that owing

to the fact that it has been necessary for plaintiff to construct and maintain extensive shops and yards at Tulsa in addition to the shops and yards at Sapulpa, if plaintiff is prevented from removing its said shops from Sapulpa to Tulsa, it will be necessary for plaintiff to maintain and operate, at a great expense and loss to its stockholders, two extensive sets of shops and yards within eighteen miles of each other, thus entailing great additional and needless cost and expense, resulting in great confusion and congestion of traffic causing loss of time to shipments, and thus interfering with and placing a direct burden upon plaintiff's interstate commerce business.

(i) That in the proper conduct and operation of its railroad, it becomes necessary from time to time for plaintiff to readjust its division points and to find better and more efficient, suitable and convenient places for repair work and for keeping its rolling stock and other instrumentalities of its railway used in interstate commerce in proper condition, and that these matters are purely managerial and necessary to be confided to such railway company the better to serve the public and its stockholders and those who invested large sums of money in said railway.

XIV

By reason of the foregoing facts plaintiff says that said Statutes in so far as they have been construed and made applicable to the conditions described herein, are unconstitutional, confiscatory, arbitrary, unnecessary and void in that they, as applied to said conditions and construed by said Commission, grant to said Commission authority to issue orders and decide questions directly regulating, affecting and constituting a burden on interstate commerce; that the question as to whether or not this plaintiff be permitted to remove its division point and shops from Sapulpa to Tulsa is one vitally and materially affecting the extensive interstate commerce business of plaintiff; that the orders of said Corporation Commission heretofore issued as hereinbefore set forth constitute a direct interference with, a regulation of, and burden upon plaintiff's interstate commerce business; that the orders that said Corporation

Commission will necessarily issue as a result of said proceedings and as a result of its construction of said Statutes, will constitute a regulation of and interference with, and a burden upon plaintiff's interstate commerce business.

XV

Plaintiff states that to require it, under the conditions as herein described, to continue its division point and shops at the City of Sapulpa, and to prevent it from removing its [fol. 15] said shops from the City of Sapulpa to the City of Tulsa and consolidating the two at said last named City, would cause a great and irreparable loss to plaintiff and its stockholders, and place a direct burden upon interstate commerce, and make it impossible for plaintiff to comply with the Act of Congress known as the Transportation Act, requiring it to economically operate its property; that it would cause such needless expenditure of large sums of money as to amount to a deprivation and taking of property from plaintiff without due process of law, forbidden by the Fourteenth Amendment to the Constitution of the United States.

XVI

Plaintiff says that unless it submits to the jurisdiction assumed by the Corporation Commission by reason of the above named Statutes as construed by said Commission, and obeys the injunctive process issued against it by said Commission as aforesaid, it will be burdened and harrassed with numerous suits for penalties for its failure to so submit to such jurisdiction, and will entail great and irreparable damage; that unless restrained defendants, J. F. Lawrence and C. C. Taylor, will appear before said Corporation Commission on the said 17th day of January, 1927, with sundry witnesses and will procure an order from said Commission preventing the removal of plaintiff's shops and division point as herein described until the above named Statutes are complied with by plaintiff, and unless restrained said Corporation Commission of the State of Oklahoma, composed of defendants, Frank C. Carter, Fred Capshaw and C. C. Childers, will on said day, or at some future date to which said action is continued, take jurisdic-

tion of said action and hearing and will, at the conclusion of said hearing, issue its order permanently prohibiting and enjoining plaintiff from so removing its said shops and division point until plaintiff has complied with the above named Statutes, and unless restrained and enjoined, defendant, Edwin Dabney, Attorney General of the State of Oklahoma, will, at said hearing and at future hearings [fol. 16] and times, attempt to enforce said Statutes and the orders of said Corporation Commission based thereon, thus harrassing and injuring plaintiff to its great damage; that unless restrained said defendants, and all of them, will enforce the temporary restraining order so issued by said Corporation Commission as herein set forth, and prevent plaintiff from putting into effect its schedule regulating its interstate trains as herein set forth and described; that the effect of said actions on the part of said defendants will interfere with the management and operation of plaintiff's interstate commerce business to such an extent as to cause plaintiff great immediate and irreparable damage. Plaintiff says that as the effect of the action of said defendants is to interfere immediately with the management of its interstate business and the control of its interstate trains, that the danger of said damage to plaintiff's business as herein described so caused by the actions of defendants as herein set forth, is imminent, and in order to preserve plaintiff's business and plaintiff's management thereof, a temporary restraining order by this Honorable Court is necessary. Plaintiff says that it has no adequate remedy at law.

Wherefore, and for as much as plaintiff is without remedy in the premises, according to the common law, and remediable only in equity, and to the end that plaintiff may not be subjected to suits for penalties and a multiplicity of suits which will otherwise result, and will not suffer irreparable injury and damage which must result if plaintiff refuses to submit to the jurisdiction of said Corporation Commission, and to the end that plaintiff may be permitted to pursue and carry on its business without unlawful hindrance or obstruction, plaintiff prays that a writ of subpoena be issued against the defendants, and that each and every one of them named and described be ordered to appear and

fully submit and make answer to this bill of complaint, but not under oath, answer under oath being expressly waived, and that said defendants, and each of them, their agents, [fol.17] servants and employes, and all other persons acting under or through their authority, or authority of their officers and all other persons similarly situated, respectively, be enjoined by final decree, and in the meanwhile by preliminary injunction, from compelling plaintiff to submit to the jurisdiction of the Corporation Commission in the several matters aforesaid, and plaintiff prays that in the meantime a temporary restraining order be issued in accordance with its plea for preliminary injunction, and in order that said plaintiff may not suffer the irreparable injury and damage that it otherwise will and must suffer as is alleged and charged in said bill of complaint.

Stuart, Cruce & Franklin, Attorneys for Plaintiff.

[fol. 18] *Duly sworn to by Ben Franklin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES E. HUTCHISON—Filed January 19, 1927

STATE OF MISSOURI,

County of Greene, ss:

James E. Hutchison, being duly sworn upon his oath deposes and says:

My name is James E. Hutchison. I reside in the City of St. Louis, State of Missouri. I am employed by the St. Louis-San Francisco Railway Company as Vice-President in Charge of Maintenance and Operation. I have been continuously in the employ of the St. Louis-San Francisco Railway Company and its predecessors since about March 1, 1903. My first employment with the St. Louis-San Francisco Railway Company was as trainmaster, a position which now bears title of assistant superintendent, with headquarters at Sapulpa, Oklahoma, and had charge as

trainmaster or assistant superintendent over that part of the line extending from Sapulpa, Oklahoma, to Sherman, Texas.

At that time the railroad had been quite recently extended from Sapulpa to Oklahoma City and from Sapulpa to Sherman, Texas. The predecessor of the St. Louis-San Francisco Railway Company had pushed their line southward and westward from St. Louis and had reached Sapulpa, Oklahoma, then Indian Territory, a few years prior to 1903. At the time of this construction there was little development in the country so far as white population or white settlements were concerned. The territory was known as the Indian Territory and was in fact a large Indian reservation. So late as the 1st of March 1903 there was only a small village at Tulsa and the same at Sapulpa.

When the railroad halted at Sapulpa in its building operations it was, of course, necessary to provide something in the way of terminal facilities at that point and when the two lines, the one extending from Sapulpa, Indian Territory, to Oklahoma City, Oklahoma Territory, and the other extending from Sapulpa, Indian Territory, to Sherman, Texas, were constructed and placed in operation it was necessary to enlarge this terminal somewhat, but in 1903 when affiant entered the employ of the predecessor of the St. Louis-San Francisco Railway Company as trainmaster at Sapulpa, Indian Territory, there was very little in the way of a terminal at Sapulpa. There was a small roundhouse with a few necessary accompanying buildings and small collection of yard tracks, in fact barely sufficient to take care of the small amount of business handled at that time.

Along about 1905 Tulsa began to enter into the picture. Tulsa began to show considerable signs of growth and with the advent of the oil shortly afterwards Tulsa became the center from which oil operations were conducted account growth so very rapid. Tulsa from its start to grow, along about 1905, grew industrially and it became necessary almost at once for the predecessor of the St. Louis-San Francisco Railway Company to provide something in the way of terminal facilities at Tulsa. However, this was taken care of all that it could possibly be from [fol. 21] Sapulpa and there was not a widening out of ter-

minal facilities at Tulsa until it was absolutely necessary to do so, but the growth of Tulsa was so great and its industrial growth so great that the St. Louis-San Francisco Railway Company, or its predecessors, found it necessary from time to time to build and construct additional units of terminal at Tulsa and West Tulsa to take care of this rapidly developing industrial business.

The location at West Tulsa where the freight terminal was established is just about twelve miles from the terminal at Sapulpa and ever since it became necessary to develop the terminal at West Tulsa it has thrown a heavy volume of expense on the St. Louis-San Francisco Railway and its predecessors that could not in any way have been foreseen when the construction of the line occurred or for some years thereafter. Sapulpa has never grown industrially in anything like degree that Tulsa has. The industrial life of Sapulpa could easily be taken care of without terminal facilities of any consequence at that point, but Tulsa must be served and the terminals at West Tulsa and at Tulsa have been enlarged and extended almost every year for a number of years and so far as we can judge at this time there is reason to expect that this expansion must go on for many years yet to come.

There has been a great change in operating conditions since, we might say, the year 1900. The size of locomotives has been greatly increased and there have been very many useful inventions that have made these locomotives much more serviceable and much more efficient. In 1900 it was thought and it was the general practice of all railroads to run their freight engines generally not much more than 100 miles. In some few cases they may have reached a run of 150 miles without giving the engine attention in roundhouse, and passenger engines were run but [fol. 22] little or no further. Since then, however, the advent of the superheater, improvements in fire boxes, brick arches, hot water injectors and many other things have made it possible to run these engines very much farther.

Some changes in construction of line have been necessary in order to let railroads secure greatest possible benefit from this changed condition of operation and so far as Frisco Railroad is concerned we are running our passenger engines now in some instances more than six hundred

miles and quite a number from St. Louis to Oklahoma City, a distance of five hundred forty-two miles without changing, and we are now strengthening some bridges between Kansas City and Birmingham and will in a few weeks be running both passenger and freight engines through without change between Kansas City and Birmingham, a distance of seven hundred thirty five miles.

These changes that have been brought about and that have meant a wonderful economy in operation of the railroads have made numerous terminals on many railroads useless and many have been and more will be abandoned. In such cases they are not removed—they are just simply not longer needed and are abandoned, and that is largely situation at Sapulpa. The terminal at Sapulpa is not longer needed. Tulsa has come into the matter so strongly and Tulsa cannot be dispensed with under any circumstances and it seems that in the interest of efficiency and economical operation there is nothing left for the St. Louis-San Francisco Railway Company to do except to abandon its terminal at Sapulpa or practically abandon it. There is one very large item in connection with the changed condition that seems to make it necessary to abandon Sapulpa terminal and that is the wonderful growth of Tulsa and the fact that this growth is so largely industrial and must be served.

Have had many figures made as to what could be saved by abandoning the terminal at Sapulpa and doing the [fol. 23] work at Tulsa that is now done at Sapulpa. Taking into account the items that can be almost surely and definitely determined we figure that we would show a saving of a little more than \$30,000.00 per month. There are a good many items that are indeterminate and that only actual experiment would show what if any saving would result from them and it is not safe to count saving that would result from such causes but practically from wiping out duplicate service alone there would be a saving of slightly over \$30,000.00 per month. If Sapulpa were abandoned and the work that is now done at Sapulpa were done at Tulsa the remaining terminals would be as follows:

Afton to the east is what we call an intermediate terminal. This point is located about 77 miles east of West Tulsa and at this point we can make a good many repairs to cars and

we do small, light repair work on locomotives. The next terminal to the east is Monett, Missouri, where we have a considerable development of mechanical shops and buildings and can and do do a large amount of car repair work and also very considerable amount of engine running repair work. This point is about 144 miles from West Tulsa. To the south at Okmulgee we have another industrial situation, and also the line from Fayetteville to Okmulgee comes into the main line at that point, so that we have a small intermediate terminal at Okmulgee where we do light repairs to cars and some very light work on engines. This point is about 43 miles from West Tulsa. At Francis, Oklahoma, which is 114 miles from West Tulsa we have a very small intermediate terminal, can do light work on cars and light running repairs to engines. At Sherman, Texas, 219 miles from West Tulsa we have quite a considerable shop and can do almost any kind of work on cars and engines. To the west at Oklahoma City, 116 miles from West Tulsa, we have a very considerable shop and can and do do heavy repairs to cars and *and* engines. We have [fol. 24] done no heavy repairs to locomotives at Sapulpa for several years. Our heavy repair work in that territory has been taken care of at West Tulsa for a long time. The mechanical facilities at Sapulpa have been devoted to rapid turning of road power and yard power and doing necessary running repairs, but the heavy work has been done at Tulsa and we have at this time a very good shop layout at Tulsa and can do and do do all kinds of work on engines and cars in considerable volume.

The yards at Sapulpa, and by that I mean the tracks which take care of the business moving through that point, are inadequate and have been for a long time. It is one of the most expensive yards on the entire St. Louis-San Francisco Railway Company to switch, a great deal of the switching, in fact I think fully two-thirds of the switching, done in this yard is done up hill, and it is and always has been a very bad situation. There is not room to widen out at all at the present location and if we secured adequate facilities at Sapulpa it would be necessary to practically tear down and destroy all we have there now and go to some other location and at an expense which has been estimated at about two and one-half million dollars to secure

the terminal that we would need if we continued to use it as we have in the past.

The injunction of the Transportation Act is that we must operate our railroads efficiently and economically if we are permitted to enjoy some certain benefits that may be enjoyed only under these conditions and we cannot operate a terminal at Sapulpa efficiently and economically. We have not done so for some years and we feel that we must get away from it.

We are not serving some parts of our line efficiently and economically and I will use only two illustrations, although many could be used. Business originating on the line from [fol. 25] Tulsa to Enid, moving to points south or west of Sapulpa, gets a usual terminal delay at West Tulsa; is then moved twelve miles to Sapulpa and gets another terminal delay. Business moving from points west or south of Sapulpa to points west of Tulsa on the Enid line, or beyond and through Enid, suffers in the same way, and practically all business moving through in both directions has a substantial delay on account of these terminals that would be removed were the business consolidated at West Tulsa as we are expecting to do.

The business that is now being handled at Sapulpa could be shifted to Tulsa without spending a dollar on additional facilities at Tulsa but as I have said before Tulsa is growing rapidly and there has scarcely been a year for several years that we have not enlarged the terminal at Tulsa and the terminal was built and has been improved with the purpose of handling the industrial proposition wholly in mind, and to make it more efficient for the handling of the train business through. We would probably spend \$75,000.00 or \$80,000.00 in lengthening some of the yard tracks and securing little more yard room and we would probably spend \$25,000.00 or \$30,000.00 in enlarging slightly the present roundhouse at West Tulsa and building possibly some extension to the power plant and we could do those things at our leisure. It would not be necessary to do them before the consolidation was effected.

It is my opinion that conditions that have grown up around which is centered and outstanding the wonderful growth of Tulsa causes us to face a condition which we

cannot endure and which we should have changed many years ago and I do not see how it can be longer delayed.

Further deponent sayeth not.

James E. Hutchison.

[fol. 26] Subscribed and sworn to before me this 18th day of January, 1927. John W. Miller, Notary Public. My commission Expires August 24, 1927. (Seal.)

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF C. T. MASON—Filed January 19, 1927

C. T. Mason of lawful age being first duly sworn deposes and says:

That he is now and has been connected with the St. Louis-San Francisco Railway Company, as Chief Dispatcher, Trainmaster, Assistant Superintendent and Superintendent since February, 1907, that he has been Superintendent, located at Sapulpa, Oklahoma of the Southwestern Division of said railway with his headquarters at Sapulpa, Oklahoma, since the 1st day of January, 1926, and is acquainted with the conditions and operation of said Railway Company, particularly with regard to the operation of the division point now located at Sapulpa, Oklahoma, and the yards and shops of said railway located at Tulsa, Oklahoma.

During the past ten or fifteen years, great improvements have been made in the construction and operation of engines and as a result of this improvement, it has been found possible and expedient to lengthen terminal points used for [fol. 28] the operation of freight and passenger trains. This applies not only to the Frisco railroad in the State of Oklahoma, but in all other states through which it operates, as it also applied to other railroads.

At the time of the location of the terminal at Sapulpa, Tulsa was comparatively an unimportant station. At the

present time, the business at Tulsa has increased very much more rapidly than it has at Sapulpa, with the result that at the present time, it is estimated that from twelve to fifteen times the volume of business originates at Tulsa as originates at Sapulpa. This has made it absolutely necessary to take care of a large number of yard engines at Tulsa, and in addition to this, Tulsa is a terminal point for trains operating on the western division between Tulsa and Enid and Avard; so that under the present arrangements, we are forced to operate two division terminals, namely: Sapulpa and Tulsa within a short distance of fourteen miles. The physical condition- for establishing a terminal point are much more favorable at Tulsa than Sapulpa, this is due, in a large measure, to the fact that the yards at Sapulpa cannot be enlarged or extended because on one side we cannot extend the yard on account of the topography of the hill and on the other side we are hem-ed in by the streets and business houses. Another condition at Sapulpa, which does not exist at West Tulsa, is that approaching the yard from either the south or the west, we encounter a heavy grade. Trains coming into Sapulpa from the south have to enter the yard on a sharp curve and heavy grade, and in a very large per cent of trains operating from the south, the train is unable to make the grade and after the train stalls, it is necessary to back out of the yard and wait for yard engine to come to its assistance. This not only delays and interfer-s with the operation of trains, but causes a great deal of inconvenience to the streets, delays to automobiles and other traffic.

[fol. 29] Necessarily, by the operation of two terminals within this short distance, there is more or less delay to loaded cars, both interstate and intrastate. We estimate that a conservative average delay to each car in the terminal would approximate twelve hours, and there does not exist the necessity of both the Sapulpa and this Tulsa terminal, and as before stated, the volume of business originating at West Tulsa, makes the terminal at that point an absolute necessity.

The cost of operating these two terminals, so close together, could be very greatly reduced by consolidating them at West Tulsa. The great reduction would be made in the overhead cost in the item of supervision. As an exam-

ple, at the present time, we find it necessary at Sapulpa to have from twelve to fourteen yard engines. By consolidating the terminals, this expense could be reduced more than half. The item of overhead expenses in the operation of trains alone would amount to a terminal trainmaster, two yard masters and four assistant yard masters at Sapulpa, which could be eliminated in the change with the probable addition of two assistant yard masters at West Tulsa. The same condition prevails with reference to the operation of the repair shops.

The unfavorable conditions mentioned with reference to Sapulpa does not exist at West Tulsa. Another serious handicap in the operation of our trains out of Sapulpa is due to the fact that we have an insufficient supply of water necessary for the operation of our locomotives, and also this water is not as suitable for this use and there being a good many months in the year, during the summer time, or when we have drouth, that this water is almost totally unfit for use, resulting in having to be treated very heavily, also in excessive blowing out of the boilers, which is not only an expense by reason of the fact that it requires an excessive amount of fuel to heat this water, but further, due to the fact that the water itself is very injurious to the boiler. The water supply at West Tulsa, which is brought from Sand Springs, is very much better than the available [fol. 30] supply at Sapulpa. It is also true that during a portion of the year, the water at Sapulpa is bad for drinking purposes. We have frequently been requested, by trainmen in our service, to ship in water from West Tulsa for drinking purposes.

At the present time, Sapulpa is not a terminal for all of our passenger and freight crews. On some of the passenger trains on the division as operated at the present time, the train crews operate between Oklahoma City and Tulsa. On others, between Oklahoma City and Kansas City and still others between Oklahoma City and Monett. We also have a passenger service train and engine crews operating, at the present time, on trains Nos. 525 and 526 between Tulsa and Holdenville, the crews running through Sapulpa. The most of our train men in passenger service at the present time operating over this territory, are divided as

between Oklahoma City, Sapulpa, Kansas City, Monett and Sherman.

With new time table taking effect January 23rd it is proposed to extend trains 507, 510, 511 and 512 to terminate at Tulsa instead of Sapulpa. This will facilitate the handling of passengers, mail and express, avoiding necessity of main line trains being delayed doing this work at both Sapulpa and Tulsa, eliminating delay at Sapulpa and transfer of passengers to or from Tulsa at Sapulpa. This change will not require additional facilities at Tulsa or eliminate any facilities now at Sapulpa.

Further affiant saith not.

C. T. Mason.

Subscribed and sworn to before me on this the 18th day of January, 1927. June E. Hedgecock, Notary Public. My commission expires January 27, 1929. (Seal of June E. Hedgecock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. W. PRESS—Filed January 19, 1927

H. W. Press, of lawful age, being first duly sworn, deposes and says:

That he is Assistant Comptroller for the St. Louis-San Francisco Railway Company, and has occupied that, and similar positions with said company for approximately twenty-five years; that the duties of his said position with said company are in the nature of accounting and statistical work, principally the latter; that he is required to analyze the records as currently maintained by the railroad, not only by the accounting department, but also by the operating, mechanical, and other departments of the system, for the purpose of developing the earnings, expenses, and other items of income and income deductions required by the

management, and for proceedings in the courts, before the Interstate Commerce Commission and the different state [fol 32] railroad commissions. He is also required to prepare special statistics showing the detailed cost of operation, such as the cost of station service, the cost of train service, the cost of yard service, etc. For many of these special statistics he is required to make a study on the ground, at stations, on trains, and on switch engines in terminals, and by reason of that fact, he is not only familiar with accounting matters but is also familiar with all phases of operation.

Affiant further says that he has compiled from the records of said railway company a statement showing the volume of business and earnings from freight and passenger traffic at Sapulpa, Oklahoma, for the year from December, 1925, to November, 1926, inclusive; that said statement shows the tonnage of, and revenue from freight traffic originating at, and received at Sapulpa, Oklahoma, and the revenue from passenger traffic from that station; that said statement is true and correct, and is hereto attached, marked "Exhibit A," and made a part of this affidavit.

Affiant has also prepared a similar statement, showing the freight traffic to, and from, and passenger traffic from the stations at Tulsa, Oklahoma, and states that the same is true and correct, and is attached to this affidavit, marked "Exhibit B," and made a part hereof.

Affiant has also prepared a statement showing the percent of intrastate and interstate traffic originating and received at, and passing through the stations at Tulsa, Oklahoma, for the year ending December 31, 1926, as applying to freight traffic originating at, and received at Tulsa stations, for the month of October, 1926, as applying to [fol 33] freight traffic passing through Tulsa, and for the year from December, 1925, to November, 1926, inclusive, as applying to passenger traffic originating at Tulsa, and states that same is true and correct, and is hereto attached, marked "Exhibit C," and made a part of this affidavit.

Affiant has also prepared a statement taken from the United States census for the years 1907, 1910, and 1920, showing the population as shown by said census, for said years, for the city of Tulsa, and the population as shown by said census, for the City of Sapulpa, and the population

as shown by said census, for said years, for the State of Oklahoma, and states that the same is true and correct, as shown by said United States census, and is attached hereto, marked "Exhibit D," and made a part of this affidavit.

Further affiant saith not.

H. W. Press.

Subscribed and sworn to before me this 18th day of January, 1927. June E. Hedgecock, Notary Public.
(Seal of June S. Hedgecock, Notary Public, Oklahoma Co., Okla.)

My commission expires January 27, 1929.

[File endorsement omitted.]

[fol. 34] EXHIBIT A TO AFFIDAVIT OF H. W. PRESS

St. Louis-San Francisco Railway Company

Statement showing Volume of Business and Earnings from Freight and Passenger Traffic at Sapulpa, Okla., for the Year from December, 1925, to November, 1926, Inclusive.

Freight Traffic

| | Tons of revenue freight | Total freight revenue |
|----------------------------------|----------------------------|--------------------------|
| Freight forwarded—Local..... | 74,093 | \$141,321 |
| Freight forwarded—Interline..... | 86,583 | 631,440 |
| Freight received—Local..... | 79,890 | 129,095 |
| Freight received—Interline. | 28,852 | 257,185 |
| Total Freight Traffic..... | 269,418 | \$1,159,041 |

Passenger Traffic

| | |
|---------------------------------------|-------------|
| Local Ticket Sales..... | \$93,592 |
| Interline Ticket Sales..... | 72,094 |
| Total Ticket Sales..... | \$165,686 |
| Total Freight and Passenger Revenue.. | \$1,324,727 |

[fol. 35] EXHIBIT B TO AFFIDAVIT OF H. W. PRESS

St. Louis-San Francisco Railway Company

Statement showing Volume of Business and Earnings from Freight and Passenger Traffic at Tulsa, Okla., for the Year Ended December 31, 1926.

Freight Traffic

| | Tons of revenue freight | Total freight revenue |
|----------------------------------|----------------------------|--------------------------|
| Freight forwarded—Local..... | 458,912 | \$1,363,599 |
| Freight forwarded—Interline..... | 783,523 | 6,544,454 |
| Freight received—Local..... | 289,274 | 1,146,794 |
| Freight received—Interline..... | 232,892 | 2,588,238 |
| Total Freight..... | 1,764,601 | \$11,643,085 |

Passenger Traffic

| | |
|---------------------------------------|--------------|
| Local Ticket Sales..... | \$786,296 |
| Interline Ticket Sales..... | 966,603 |
| Total Ticket Sales..... | \$1,752,899 |
| Total Freight and Passenger Revenue.. | \$13,395,984 |

NOTE.—Above Revenue from Passenger Traffic covers year from December 1925 to November 1926, both, inclusive.

St. Louis-San Francisco Railway Company

Statement Showing per Cents of Intrastate and Interstate Traffic Originating and Received at and Passing Through Tulsa, Okla.

Freight Traffic Originating and Received at Tulsa, Okla., During Year 1926

| | Intrastate | | Interstate | | Total Freight Revenue |
|---|----------------|-------------------|----------------|-------------------|-----------------------|
| | Revenue | Per cent of total | Revenue | Per cent of total | |
| Freight forwarded—Local | \$661,755 | 48.53% | \$701,844 | 51.47% | \$1,363,599 |
| —Interline | 496,070 | 7.58% | 6,048,384 | 92.42% | 6,544,454 |
| Total Forwarded | \$1,157,825 | 14 64% | \$6,750,228 | 85.36% | \$7,908,053 |
| Freight received—Local | \$476,493 | 41 55% | \$670,301 | 58 45% | \$1,146,794 |
| —Interline | 93,177 | 3 60% | 2,495,061 | 96.40% | 2,588,238 |
| Total Received | \$569,670 | 15.25% | \$3,165,362 | 84 75% | \$3,735,032 |
| Total Forwarded and Received | \$1,727,495 | 14 84% | \$9,515,590 | 85.16% | \$11,643,085 |
| Freight Traffic Passing through Tulsa —October, 1926 | Number of cars | Per cent of total | Number of cars | Per cent of total | Total number of cars |
| | 1,466 | 12 60% | 10,167 | 87 40% | 11,633 |

Passenger Traffic Originating at Tulsa December, 1925, to November, 1926, Both, Inclusive

| | Intrastate | | Interstate | | Total Passenger Revenue |
|-----------------------------|------------|----------------------|-------------|----------------------|-------------------------------|
| | Revenue | Per cent of total | Revenue | Per cent of total | |
| Local Ticket Sales..... | \$440,376 | 56 01% | \$345,920 | 43.99% | \$786,296 |
| Interline Ticket Sales..... | 289,981 | 30 00% | 676,622 | 70 00% | 966,603 |
| Total Ticket Sales..... | \$730,357 | 41 67% | \$1,022,542 | 58 33% | \$1,752,899 |

[fol. 37]

EXHIBIT D TO AFFIDAVIT OF H. W. PRESS

St. Louis-San Francisco Railway Company

Statement Showing Population of the Cities of Tulsa and Sapulpa, Okla., and the State of Oklahoma
as of 1900, 1910, and 1920.

| | 1905 | | 1907 | | 1910 | | 1920 | |
|------------------------|------|--|-----------|--|-----------|--|-----------|--|
| | • | | • | | • | | • | |
| Tulsa, Okla. | • | | 15,000 | | 18,182 | | 72,075 | |
| Sapulpa, Okla. | • | | 8,000 | | 8,283 | | 11,634 | |
| State of Oklahoma..... | • | | 1,414,177 | | 1,657,155 | | 2,028,283 | |

*Oklahoma not admitted to Statehood until 1907 and figures not available for year 1900.

[Title omitted]

AFFIDAVIT OF H. L. WORMAN—Filed January 19, 1927

H. L. Worman of lawful age, being first duly sworn, deposes and says:

That he is Superintendent of Motive Power for the St. Louis-San Francisco Railway Company and has occupied that position for the last seven years, and that he has been in the mechanical department of said Railway Company for more than twenty-one years; that he is thoroughly acquainted with the conditions relative to the yards, shops, equipment and motive power of the St. Louis-San Francisco Railway Company at Sapulpa, Oklahoma, and also the shops, yards, cars, engines and all terminal facilities now being used at Tulsa, Oklahoma. Affiant further states that he is familiar with the purposes and uses of said equipment by said Company.

[fol. 39] If the shops and roundhouse at Sapulpa are abandoned and maintenance of equipment now being taken care of at Sapulpa moved to Tulsa, we can make a saving of \$11,000.00 per month, or a reduction of eighty-six men in the locomotive and car department; a further saving per month of \$1,614.00 in power plant expense; a saving of \$500.00 per month in the purchase of water for shop use; a saving in electricity purchase for lighting and power purposes, making a total saving of approximately \$14,000.00 per month. By moving this work to Tulsa, additional facilities needed to properly maintain the equipment would amount to approximately \$35,000.00. This would be for moving the mill shop, boiler capacity and power plant, and cinder conveyor. The consolidation of the mechanical work at Tulsa now being taken care of at Sapulpa, would, in addition to the savings above mentioned, affect many other features that cannot well be reduced to a dollar and cent standpoint, some of which are: A reduction in the number of hostlers by reason of a more up to date facility at Tulsa; the elimination of store house expense, power plant expense, and by reason of having more room at Tulsa for the performance of the work and more room to expand, the move

of power and handling of bad order cars both empty and under load would be greatly expedited. A great deal of duplicate inspection would be done away with. The Interstate Commerce Commission laws require that cars must be thoroughly inspected and air tested when departing from a terminal. This work is now being done at Sapulpa, and where a part of a train moves from Sapulpa to Tulsa and there picks up the major portion of tonnage, this same train that was inspected at Sapulpa must be again inspected at Tulsa, which further delays the movement.

Our labor turnover at Tulsa is considerably less than at Sapulpa by reason of the better living conditions at Tulsa. We have exceptionally good boiler water at Tulsa, and we have exceedingly bad boiler water at Sapulpa, which costs us a great deal of money on account of the necessity to treat [fol. 40] the water at Sapulpa with soda-ash in order to make it fit for boiler use.

Having two terminals located fourteen miles apart, naturally costs us more for supervision than it would if one of these points were eliminated, as each point must have a roundhouse foreman at night and an assistant, whereas if the two places were combined, the entire work could be taken care of by the two men, and the same thing is true of the supervision in all other departments.

Abandoning Sapulpa as a mechanical repair plant would release a great deal of machinery that would not be needed if the work were taken care of at Tulsa, as we have already enough machinery at this point to take care of the combined proposition, and the machinery and other facilities released at Sapulpa could be used at other points on the railroad where it is needed.

The consolidation would materially reduce the amount of material carried in store stock as we would only have one stock to carry. As the matter is now, we must carry two, and so much of this material is carried in store stock for protection purposes.

Abandoning Sapulpa as a maintenance of equipment and repair point in no way jeopardizes our ability to properly maintain all the equipment operating in and out of the State of Oklahoma, as for the past seven or eight years we have very materially increased our mechanical facilities in the State of Oklahoma for taking care of both locomotive and

car work. We have located at Enid, Tulsa, Hugo, Afton and Muskogee first class mechanical repair points where power can be maintained and all the necessary work done on equipment of every description. By eliminating Sapulpa simply means that the force will be increased at Tulsa and other points where adequate facilities are maintained at the present time to take care of repairs.

[fol. 41] The question of eliminating certain terminals today on railroads, is not necessarily a reflection on the management in charge of the railroads at the time such terminals were installed. A good many years after a mechanical repair point was established at Sapulpa, there sprung up a little village at Tulsa, and almost from the very beginning of that little village, the Frisco Railroad had, considering the size of the town, a remarkable tonnage to handle, and as the town of Tulsa grew, the Frisco Railroad's business became heavier, until it was found necessary, in order to take care of the line coming in from Enid to Tulsa, and the tremendous traffic originating at Tulsa, to have a repair point at that place, first, by reason of the fact that a great deal of the equipment and practically all the locomotives working in this territory would have occasioned a great deal of unnecessary expense for the required mechanical attention at Sapulpa; second, sufficient facilities were not maintained at Sapulpa to properly take care of the equipment, without burdening it further by taking equipment from Tulsa to Sapulpa to have the work done; and, third, by reason of the fact that it was impossible to buy additional property adjacent to the present mechanical facility at Sapulpa, suitable for enlarging the plant. During all these years there has been a gradually increased necessity for a larger mechanical facility at Tulsa, by reason of the heavy traffic originating at this particular point, and on account of not being able to expand at Sapulpa, as above stated, the expansion at Tulsa necessarily followed where there is plenty of room, good living conditions, good water, etc. I simply mention these things in order to show that Tulsa's mechanical facility was not originated for the purpose of sooner or later abandoning Sapulpa as a repair terminal, but was established because there was a dire necessity for a shop at this point to take care of the work originating there.

It must be further remembered that the railroad, in striving to produce better transportation and to handle it more economically, acquire larger and more modern locomotives, [fol. 42] larger and more modern freight equipment, as well as passenger *re*quipment, and it was gradually found that a necessity no longer existed for a repair point every 100 miles or 125 miles. For this reason repair points have gradually been eliminated in territories where they were too close together, and were not needed. I might mention as specific instances, Cape Girardeau, Missouri and Cherokee, Kansas. The elimination of these small terminals is made possible by reason of the fact that where heretofore locomotives on passenger trains were run for a distance of from 100 miles to 125 miles on the longest runs, passenger engines are now running a distance of 575 miles, or from St. Louis to Oklahoma City, a distance of 542 miles, and are doing it more successfully than they did when run the short distances of approximately 125 miles. In eliminating these small repair points that I speak of, it has been the policy of the road, and will continue to be the policy, to strengthen the larger points with the machinery and equipment removed from points abandoned. This eliminates the weak places where they are not needed, and strengthens the more important points where additional facilities are needed without spending money for new machinery and other facilities to reinforce the repair points where such machinery and facilities are needed. There are some facilities and machinery that are not needed at Sapulpa, which will be moved to Tulsa, where there is today a modern, well-equipped machine shop with the latest improved machinery that money can buy; well heated, well lighted, operated with electricity, and many of the machines have individual electric drives. There is a modern power plant with water tube boilers, electric driven air compressors, etc. Also a modern round-house, with stalls of sufficient length to house the heaviest power.

Another matter of vital importance in handling a large repair point, is plenty of outside room for standing equipment waiting to come in or go out of a shop, as well as ample room for expansion. In other words, one cannot afford to install modern facilities in a location where in another few

years it will be found that the business has increased to [fol. 43] such a point as to make it necessary that the entire mechanical facilities be moved to some other location. Considering the great volume of tonnage originating at Tulsa, it is imperative that a modern shop be maintained at this point to properly care for the equipment necessary to handle this traffic, and if we are compelled to operate two terminals within fourteen miles of each other, it makes it a very expensive proposition and naturally this additional cost must be borne by the shipping public.

H. L. Dorman.

Subscribed and sworn to before me this the 18th day of January, 1927. June E. Hedgecock, Notary Public. My commission expires January 27th, 1929. (Seal of June E. Hedgecock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. H. SHAFFER—Filed January 19, 1927

F. H. Shaffer of lawful age, being first duly sworn, deposes and says:

That he has been connected with the St. Louis-San Francisco Railway Company for the last eight years; that during that time he has been connected with the Transportation Department; that he has been Superintendent, Assistant General Manager and is now General Manager of said Company; that as General Manager of said Company he is acquainted with the operation of said Company's trains, its terminals, yards and shops; that he is particularly acquainted with the business of said Company with relation to its shops and division point at Sapulpa, Oklahoma, and its shops, terminal and yards at Tulsa, Oklahoma; that affiant's knowledge regarding the matters hereinafter set

forth in this affidavit has been acquired by reason of his connection with said Company as above set forth.

[fol. 45] As a rule twenty to twenty-five years ago terminals were located about one hundred miles apart. Since that time, with the improvement in locomotives and roadway expediting the movement of freight trains, it is desirable to lengthen the runs, eliminating terminals, thereby reducing expense and delay to traffic.

On the Southwestern division West Tulsa terminal is located only twelve miles from Sapulpa terminal. The earnings from freight and passenger traffic at Tulsa for the year ending December 31, 1926, amounted to something over \$13,000,000.00, while the business from Sapulpa for the year 1926 was slightly in excess of \$1,000,000.00. Our business at Tulsa continues to increase, and it is vitally important that we have the terminal of our trains at that location for the purpose of expediting business and reducing unnecessary expenses. If we are permitted to move our terminal from Sapulpa to Tulsa it will result in a saving in transportation expenses of slightly in excess of \$30,000.00 per month. This saving is in yard engines or service, road freight service, passenger and freight station force, the loading of merchandise cars, per diem on cars, etc. We are working at Sapulpa an average of thirteen engine shifts per day, based on the year 1925. By changing the terminal to Tulsa, we will only work at Sapulpa enough yard engines to take care of the industry switching, and we think we can take care of that switching with two shifts. At West Tulsa it will be necessary to increase the number of yard engines to approximately five shifts per day. This results in a saving of seven yard engines, working eight hours per day. At both Sapulpa and Tulsa, at present, we have the necessary supervision, including Superintendent of Terminals, Terminal Trainmaster, General Yardmaster, Assistant Yardmaster, etc. The entire yard supervision at Sapulpa will be eliminated, and it will be necessary to add only two or three positions in Tulsa on account of the increased car handling. In the Sapulpa terminal, at the present time, we employ one Chief Yard Clerk and [fol. 46] fourteen other yard clerks. None of these men will be required at Sapulpa if the terminal be moved, but

it will probably be necessary to transfer six or seven of these positions to Tulsa. It is necessary, at present, for almost all through freight trains operating between Sapulpa and Afton, to stop at Tulsa to set out and pick up cars, which results in considerable delay, overtime and fuel, in doing so. By changing the terminal to Tulsa, our trains would start out of Tulsa with the trains made up properly and avoid such delays.

Our present facilities at Sapulpa are inadequate to properly take care of the long trains we are now handling. In trains consisting of fifty cars or more, — are required to double over, using two tracks, resulting in considerable delay, both inbound and outbound. The average time lost on account of doubling over and other terminal delays at Sapulpa, is 164 hours per month. I am positive this delay will be cut in half were the trains made up at Tulsa. Cost of fuel and other engine supplies is estimated at \$5.16 per hour.

At Tulsa a very large number of cars are loaded with merchandise in the freight house every day. In addition a large number of cars are loaded in the Tulsa terminal on team tracks and otherwise, which cars are ready for movement during the evening hours. At the present time, in order to move this business westbound, it is necessary that a crew at Sapulpa be ordered to run light to Tulsa to pick up this westbound business, returning to Sapulpa, where it is again switched and forwarded by crews operating toward Oklahoma City and Sherman. This is an unnecessary expense, and if the terminal were located at Tulsa, the crews could be ordered as the business demanded, and the traffic could be handled through to Oklahoma City, Francis, and intermediate points without the necessity of stopping at Sapulpa. The turnaround service operated during the month of December, 1926, amounted to twenty trains, at a cost of \$720.00.

If permitted to move the terminal from Sapulpa to Tulsa, it would result in a saving in the transfer of less than carload shipments now being worked over the platform at [fol. 47] Sapulpa. At the present time freight loaded at stations such as St. Louis and Kansas City, destined to local points south and west of Sapulpa, is moved to Sapulpa where it is reworked into other cars and forwarded to des-

tionation by local freight trains. Adequate facilities are maintained at Tulsa to take care of this less than carload freight that is now being worked at Sapulpa, and it can be worked at Tulsa with very little additional expense. This saving would be far reaching. Where at the present time, for example, St. Louis freight house will load one car of freight for Tulsa and one for Sapulpa, the loading could be taken care of in one car which would save hauling the added loaded car from St. Louis to Sapulpa. It would also save expense in the switching of the cars at the freight houses at originating points.

By eliminating Sapulpa the per diem saving would be very considerable—the estimate being placed at \$10,000.00 per month. This is brought about by reason of cars that are now handled into Sapulpa and reswitched, being handled through Sapulpa without stopping. It would further save an average delay to freight of from six to eight hours per day. By eliminating the terminal at Sapulpa, will also result in a considerable saving in track maintenance. There is quite a large force now engaged in maintaining the tracks at both Tulsa and Sapulpa, and if the proposed elimination is effected the maintenance of such tracks will be decreased about \$300.00 per month.

The following terminals at present are tributary to Sapulpa:

Oklahoma City, approximately 104 miles,
Francis, approximately 102 miles,
Afton, approximately 89 miles,
Monett, approximately 156 miles,
Enid, approximately 132 miles.

By eliminating the Sapulpa terminal, the following would be the distances from Tulsa:

Oklahoma City, approximately 116 miles,
Francis, approximately 114 miles,
Afton, approximately 77 miles,
Monett, approximately 143 miles,
Enid, approximately 120 miles.

It will be noted that by the elimination of the Sapulpa [fol. 48] terminal there are no excessive lengthy freight divisions.

By eliminating the repair to locomotive and car shops at Sapulpa, there will still be adequate facilities to take care of this work maintained at West Tulsa, Enid, Oklahoma City, Hugo, Muskogee and Afton. Possibly by eliminating the terminal at Sapulpa it will be necessary to add a small force at West Tulsa.

The present yards at Sapulpa are inadequate to take care of the modern freight trains now being operated in that territory. The tracks are entirely too short. It is necessary that the trains double over, using two tracks, and the yards are so located that they cannot be enlarged without a very excessive expenditure. Without question, the elimination of Sapulpa will bring about an improved handling of freight out of and into Tulsa proper. For example, a shipment now originating west or south of Sapulpa, destined Tulsa, is set out at Sapulpa by reason of the terminal. The train is then inspected, switched and moved to Tulsa, whereas if Sapulpa were eliminated, the freight train would not even stop there in many cases. The outbound business would be moved as promptly as there was sufficient freight to warrant operating a train. At the present time all power to move the business out of Tulsa has to be fired up at Sapulpa and moved to Tulsa, a distance of twelve miles, in many cases light, to pick up the business. This results in an unnecessary number of light miles, with added expense of switching and fuel. The terminal could be moved from Sapulpa to Tulsa with very little additional expense to West Tulsa. In fact the facilities now at West Tulsa are sufficient to take care of the business. These facilities would, no doubt, be added to from time to time as found necessary. With an expenditure of not to exceed \$150,000.00 there could be sufficient yard tracks added to the present yard at Tulsa to take care of the business for a considerable period. The expense of operating terminals has gradually increased during the last fifteen or twenty years, and, at the present time, on the Frisco Railroad the expense in wages of operating the terminals is almost equal to the wages of the employees engaged in hauling the freight between the terminals. [fol. 49] Therefore, it is necessary that terminals be abolished where possible, resulting in expediting movement of business and economy in operation. The modern loco-

tive is good for a run of from five hundred to seven hundred miles without any great amount of shop attention, and it has been found, by eliminating terminals, operating expenses have been greatly reduced.

Under the present time table, trains Nos. 512 and 507 operate between Ada, Oklahoma and Sapulpa, Oklahoma, connecting with main line trains Nos. 112 and 7 at Sapulpa. Trains Nos. 510 and 511 operate between Sherman, Texas and Sapulpa, Oklahoma, connecting with main line trains Nos. 10, 111 and 9. Effective with the new time table at 12:01 A. M., January 23, 1927, it is proposed to extend the runs of trains Nos. 507, 510, 511 and 512 from Sapulpa into Tulsa, connecting with the main line trains at Tulsa instead of Sapulpa. This, for the reason that it will better serve the people enroute from the south and west moving into Tulsa, and the people moving out of Tulsa to the south and west, avoiding a layover and switching at Sapulpa. Furthermore, it will reduce the delays to main line trains, which are now delayed at Sapulpa, handling baggage, mail and express, and which main line trains are further delayed at Tulsa, handling baggage, mail and express for the connecting lines. Under the new arrangement, all the baggage, mail and express will be handled at Tulsa and transferred to the connections at Tulsa. The operation of the extension to these trains will in no way affect the present facilities at Sapulpa or Tulsa. It will simply mean that the crews now terminating at Sapulpa, will run through to Tulsa, and the crews now taking the trains at Sapulpa will take them out of Tulsa. This affects seven crews. The railroad and shipping facilities at Sapulpa will not be affected in any manner. The method of operating these passenger crews through Sapulpa is no different than crews are being operated at the present time on other trains. For example, our passenger crews are operating through between Tulsa, Oklahoma and Holdenville, Oklahoma, on [fol. 50] trains Nos. 525 and 526, and we have main line conductors and brakemen running through Sapulpa on trains operating between Oklahoma City and Kansas City, Oklahoma City and Monett, and Oklahoma City and Tulsa.

If the time card or schedule contemplated to be in force by the Company on the 23rd day of January of this year,

is enjoined, and the Company is not permitted to put that timecard in force, it will seriously interfere with the timecard which was prepared in order to make service effective throughout the entire line and through six or seven states, and will therefore, seriously impair the service.

The removal of the division point now at Sapulpa to Tulsa will leave the same facilities for the traveling and shipping public as now exist at Sapulpa. The establishment of division points along the line of an interstate railroad is primarily for the purpose of increasing the facilities for handling interstate and intrastate commerce. Division points are established at one place or the other according to the necessity of traffic and for the purpose of facilitating that traffic. A division point established one year may not be a proper division point the following year. At an early day, division points were more numerous and closer *go-ether* by reason of the inferiority of the motor power and the tracks, but in these modern days, by reason of improved trackage and improved motor power, division points are constantly lengthened, and an effort is made, wherever possible in the interest of economy, to abandon as many division points as practicable. The establishment of division points is never made for the convenience of either the passenger or the shipper, but is made, as said above, for the purpose of facilitating the commerce coming to the railroad. It is a fact that the shipping public is constantly demanding better service and more dispatch in the movement of freight and that the traveling public is demanding faster trains and fewer stops in order that they may reach the busy centers on interstate railroads, and in order to satisfy this growing demand of the traveling and shipping [fol. 51] public, great competition has arisen between railroads and therefore, it is necessary for any particular railroad to meet these demands in order to hold its business.

As already said, division points are established for the purpose of bringing about more efficient service on the part of the railroad and if the railroad is not permitted to select the points at which it will establish divisions, or is not permitted to leave a point where division has been established, if such division is no longer practical from a standpoint of business or economy, great confusion will result in the management of trains, great delay will occur in the move-

ment of freight and passengers, and it always means a greater added expense.

With reference to the location of shops at any particular point, I may add that the shops are located for repair purposes and for keeping in good running order all the equipment used in the interstate commerce on this railroad. A very large percentage of the cars moving on this railroad is interstate commerce. The shops, of course, are therefore, a necessary incident to interstate commerce in order to keep the equipment in proper condition to move the cars, and in the natural course of things, must, in nearly every case, be located at division points. Naturally the traveling public nor the shipping public, nor those who have business with the railroad, are effected by the location of the repair shops. The public convenience is in no way served by the location of the repair shops, but they are simply a necessity adjunct to all the other instrumentalities of commerce in order to make possible the proper movement of that commerce.

The division point at Sapulpa was established a great many years ago. At that time, the Frisco railroad was just entering the Indian Territory, and for many years Sapulpa was the end or terminus of the line. For that [fol. 52] reason, it was natural and practical to establish a division point at Sapulpa, but since then the population of the country through which the railroad ran, has vastly increased — the business interest of the country *and* very much expanded. Large cities have grown up on the line of the railroad. Tulsa, a city of more than one hundred thousand people, Oklahoma City, a city of more than one hundred thousand people; Tulsa only fourteen miles from Sapulpa and Oklahoma City about one hundred miles. The change in population, the change in volume of business, the growth of cities, and all these things, have made it absolutely necessary in the efficiency and economy of the service to readjust division points, to abandon some and acquiring others, and it is these changes in conditions that now make it imperative for the railroad company to move its division point from Sapulpa.

Further affiant saith not.

F. H. Shaffer.

Subscribed and sworn to before me on this the 18th day of January, 1927. June E. Hedgecock, Notary Public. My commission expires January 27, 1929. (Seal June E. Hedgecock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF FRED CAPSHAW ET AL.—Filed January 19, 1927

Fred Capshaw, Frank C. Carter, and C. C. Childers, being duly sworn, depose and say that they are the members of the Corporation Commission of the State of Oklahoma, and defendants in the above entitled cause; that the records in the office of the corporation commission show that on the 5th day of February, 1917, there was filed in the office of the corporation commission a complaint entitled "J. F. Lawrence and C. C. Taylor, complainants, vs. St. Louis & San Francisco Railway Company, a corporation, defendant"; a copy of which, omitting signatures and filing marks, is in the words and figures following:

[fol. 54] BEFORE THE CORPORATION COMMISSION OF THE STATE
OF OKLAHOMA

No. —

J. F. LAWRENCE and C. C. TAYLOR, Complainants,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Corporation,
Defendant

Complaint

The complainants in said cause respectfully show that they are citizens and residents of the city of Sapulpa, Oklahoma. That at the mass meeting of the citizens of Sapulpa

held on Saturday, the 3rd day of February, 1917, and attended by approximately 150 of the tax-payers of said city they were selected as a committee on behalf of the citizens of Sapulpa to file this complaint with the Corporation Commission, the said Lawrence being elected chairman of said meeting, and said Taylor secretary, and for themselves as citizens and tax-payers of said city on behalf of said mass-meeting and on behalf of the railroad employees and all the inhabitants of said city they file this complaint.

The railroad now owned by St. Louis-San Francisco Railway Company was originally constructed from the East into what was then the town of Sapulpa, approximately 25 years ago. At that time Sapulpa was in the Indian Territory and was a mere village, and the section of the country thereabouts was sparsely inhabited. At said time the town of Sapulpa was made a division point, it being the terminus of the railroad and has remained a division point ever since. Repair shops were located by said railway company or its predecessor in title at the time said road was built to Sapulpa, and they have remained there ever since, growing in importance and capacity. About the year 1897, said railroad was extended from Sapulpa in a southwesterly [fol. 55] direction to Oklahoma City in what was then Oklahoma Territory, and in 1901 the railroad was extended in a Southerly direction to the Red River, thus giving lines running towards the West and towards the South and making Sapulpa the converging point for the Southern and Southwestern traffic.

Since that time the city of Sapulpa has grown rapidly and its growth and population have largely measured and increased the business of said railroad company, said company now employing in the shops and on the trains making this a division point approximately 600 men, most of whom have their families located at Sapulpa and supporting a population of approximately 3,000 people. Approximately 50% of the employees of said railroad company own homes in the city of Sapulpa and many of them have been residents and inhabitants of said city for many years.

The said railway company now propose to move its shops and division point from Sapulpa to West Tulsa, Oklahoma, and these complainants say that said removal should not be allowed for the following reasons:

1. The location of said shops in West Tulsa is in the valley of the Arkansas River and on ground that has overflowed in the past and is subject to overflow and is an unhealthy location. That the 3,000 men, women and children dependent on said railroad company ought not to be subjected to the dangers of sickness and disease by removing them to an unhealthy location. That the city of Sapulpa is a healthy and pleasant place to live.

2. That the employees of the said railroad company and their families wish to remain in Sapulpa and are opposed to moving, and that their position has already been expressed by the action of the four brotherhoods, that is to say, the Brotherhood of Railroad Trainmen, the Brotherhood of Railroad Conductors, the Brotherhood of Railroad Fireman and the Brotherhood of locomotive engineers.

3. From the beginning the city of Sapulpa has time and again granted various streets and alleys and the citizens [fol. 56] thereof have furnished other real estate for the use of said railway company, and all of said grants have been with the understanding at all times that the city of Sapulpa should be and remain a terminal point, and removal at this time would be an act of bad faith.

4. On the lines running from Sapulpa westerly, Oklahoma City is the next division point, being a distance of 101 miles from Sapulpa. On the lines running from Sapulpa to the South, Francis is the next division point at a distance from Sapulpa of 102 miles. On the lines running from Sapulpa towards the East Afton is the next division point, being a distance of 90 miles. West Tulsa is on the lines from Sapulpa on the East at a distance of 15 miles, so that a removal of the division points to that place would shorten the Afton division to 76 miles, would lengthen the Oklahoma City division to 115 miles, and the Francis division to 117 miles. That the pay of railroad men is based on divisions of 100 miles each, and that it is customary throughout the United States for divisions to be approximately 100 miles apart.

5. School and church facilities have been built up at Sapulpa based on the presence of approximately 3,000 people maintained directly by said railroad division, while

there are no school and church facilities at West Tulsa to take care of the children of said operators.

Wherefore the complainants pray that an order may issue prohibiting said railway company from moving said division point and shops, or either of them, until the final hearing in this cause and that notice be given to said railway company of the time and place of said hearing and that at said hearing said railway company be prohibited from permanently moving their said shops or division point from the city of Sapulpa to West Tulsa or elsewhere.

— — —, Attorneys for Complainants.

[fol. 57] STATE OF OKLAHOMA,
Oklahoma County, ss:

Before me, Emma Seberger, a Notary Public in and for said county and state, personally appeared J. F. Lawrence who being duly sworn deposes and says: That he is one of the complainants in the foregoing complaint; that he is familiar with the facts therein stated and the allegations therein contained and that the same are true.

Subscribed and sworn to before me this 5th day of February, 1917. — — —, Notary Public. My commission expires January 12, 1921.

[fol. 58] That when said complaint was presented to the commission, the records of the commission show that an order was made setting said cause down for hearing and prohibiting the Railway Company from removing its division point and shops from the City of Sapulpa until the further order of the commission; said order, omitting caption, signatures and filing marks, being in the words and figures following:

"This cause came on to be heard on this 5th day of February, 1917, upon the complaint of the complainants and their application for temporary order and the same being considered by the commission, it is ordered that said cause be set down for hearing in the District Court room at Sapulpa, Oklahoma, at ten o'clock A. M., on February 19,

1917; that notice be given the defendant as provided by law and that in the meantime the said defendant and all its officers, agents and employees, until the further order of the commission, be and they are hereby prohibited from moving the division point and shops of said Railway Company or either or any of them which are now located at Sapulpa, Oklahoma, from their present location.

"It is further ordered that a copy of this order be served on the defendant.

"Done at Oklahoma City, Oklahoma, on this the 5th day of February, 1917."

That thereafter a hearing was held, and much evidence was taken, but before any decision was reached by the commission, the Legislature of the State of Oklahoma in its Session in 1917 passed the act quoted in the bill of complaint in this cause; that after the passage of said act no further proceedings were had in the cause pending before the corporation commission, and no further action was taken by the Railway Company to remove its shops, terminal and division point from the City of Sapulpa until towards the close of the year, 1926; that on the 29th day of December, 1926, there was filed in said cause still pending before the corporation commission the motion, which, omitting signatures and filing marks, is in the words and figures following, to-wit:

[fol. 59] BEFORE THE CORPORATION COMMISSION OF THE STATE
OF OKLAHOMA

No. 2812

J. F. LAWRENCE and C. C. TAYLOR, Complainants,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Defendant

Motion

Come now the complainants on behalf of themselves, of the Chamber of Commerce of the City of Sapulpa, and of the citizens of said City, and respectfully show to the Commission that in this cause on the 5th day of February, 1917,

an order was entered by the Commission prohibiting the defendant and all of its officers, agents and employes, until the further order of the Commission, from moving the division point and shops of said railway company, or either or any of them, which were then located at Sapulpa, from their present location. That said order has heretofore been complied with and is still in force. That the Legislature of 1917 passed an act prohibiting any railway company from removing its shops or division points which have been located at any place in this state for a period of not less than five years, without previously securing the permission of the Corporation Commission, and providing for procedure and a hearing with reference to any such removal. That notwithstanding said order and said act of the legislature the defendant has issued orders directing that the division point for all its passenger trains be changed from Sapulpa to Tulsa on the first day of January, 1927, and that it is the purpose of the defendant, as complainants are advised, to remove its shops and division [fol. 60] point from the City of Sapulpa to the City of Tulsa or West Tulsa. That said shops and division point have been located at Sapulpa for more than five years, and as shown by the original petition in this cause, have been located at said place for approximately thirty years.

Said defendant has not filed an application with the Corporation Commission, as required by the Act of 1917 (Comp. L. 1921, Sections 3482 et seq.), nor has it taken any steps to comply with said act, nor has the order made by this Commission heretofore recited been at any time modified or set aside, but said order is still in force and effect.

Wherefore, the complainants pray that a time may be fixed by the Commission for hearing this application, and that in the meantime the said defendant be prohibited from changing the division for its passenger trains or altering the runs on said trains from the City of Sapulpa, or from taking any other steps towards the removal of its shops or division point now located at the City of Sapulpa.

— — —, Attorneys for Petitioners.

[fol. 61] STATE OF OKLAHOMA,
Oklahoma County, ss:

Before the undersigned, a notary public in and for said county, personally appeared T. L. Blakemore, who being duly sworn says that he is one of the attorneys for the petitioners above named, that he has read the foregoing application and that the facts therein stated and the allegations therein contained are true.

Subscribed and sworn to before me this — day of December, 1926. — — —, Notary Public. My commission expires — — —, — — —.

[fol. 62] That upon the presentation of said motion an order was made by the corporation commission requiring notice to be served upon the Railway Company, setting said cause for hearing on January 17, 1927, and in the meantime ordering the Railway Company not to take any further steps towards removing its terminal from the City of Sapulpa; a copy of said order being contained in the bill of complaint filed herein.

Affiants further say that the corporation commission has not concluded the hearing of said cause; that no evidence has been taken since the filing of the motion last referred to; that the defendant Railway Company has never offered any evidence in said proceeding; that it has never applied to the corporation commission for authority to remove its railroad shops or division point from the City of Sapulpa, either in the case now pending before the corporation commission or in any other proceeding, nor has it made any showing or taken any steps of any kind to comply with the Act of the Legislature of 1917, quoted in the bill of complaint.

Affiants further say that the corporation commission, and that affiants, personally, have not decided the case, nor have they reached a conclusion as to the removal of the division point and shops from the City of Sapulpa, and naturally could not reach a conclusion until the application had been made, the evidence considered, and the cause submitted to the commission; that if, and when an application is made by the Railway Company for permission to remove its shops and division point from the City of Sapulpa, it

will be the duty and purpose of the corporation commission to hear said application in accordance with the statute, to consider the same and the evidence presented, and to make such order in the case as right and justice require; and that until such application and hearing, the corporation commission and the members thereof do not know what the order will be, and cannot tell, and do not know whether the [fol. 63] application will be granted or refused.

Fred Capshaw, F. C. Carter, C. C. Childers.

Subscribed and sworn to before me this 13 day of January, 1927. E. D. Hicks, Jr., Notary Public.
My commission expires 5/8/29. (Seal.)

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. A. BOYD—Filed January 19, 1927

STATE OF OKLAHOMA,

County of Creek, ss:

J. A. Boyd, of legal age, being first duly sworn, on oath deposes and says:

That he has been a resident of Sapulpa, Oklahoma, since August 2, 1900; that he was a member of the City Council in 1902-1903; and was Chairman of the Water Committee of said Council; that during the year 1902 Sapulpa built its first water works plant; while this plant was under construction the question of water supply for the Frisco Railway Company came up; affiant was instructed by his fellow members to negotiate with the Frisco Railway relative to furnishing water for their use at this terminal. By correspondence through the regular channels, this matter reached the office of Mr. Davidson, who was Vice-President in charge of Maintenance of Ways under whose jurisdiction this matter came; Mr. Davidson met with the Water Committee of the City Council of the City of Sapulpa and stated that they were interested in making such contract, but would want to know that we had a sufficient supply for a

number of years and also stated that they intended to materially increase the terminals at this place. At our suggestion, Mr. Davidson put us in touch with a firm of engineers in St. Louis, namely, Breneke & Fay, and suggested that we have them as disinterested parties to make a survey of our water shed to determine the possible supply and recommend the necessary storage facilities. This we did and on their recommendation we built an additional dam on Rock Creek at or near where the present pump station is located, and by reason of this additional dam we were forced to build a bridge across Rock Creek on the William-Sapulpa road, northwest of Town at our own expense. As a result of various conferences and the building of additional storage capacity, a satisfactory contract was made between the City of Sapulpa and the Frisco for a water supply.

[fol. 65] Affiant further says that during the year 1903, while he was still a member of the City Council that the Frisco, by its attorney, Mr. Fred Pfendler, and its engineer, Mr. Jack Taylor, and probably other representatives, presented to the City Council a map showing a large terminal, including additional round house and other facilities, with probably 32 tracks across Main Street, as then laid out and asked the City Council to vacate and close Main Street, demonstrating to the council that it would be impossible to build such a terminal and keep Main Street open. The building of this terminal as outlined appeared to be of such magnitude that the Council considered it necessary, and by ordinance, did, vacate and close Main Street.

Affiant further states that in all these discussions, when the matter of permanency, was brought up, the magnitude of the improvement was held up to us as sufficient guarantee for the permanency of the terminal.

Further affiant saith not.

J. A. Boyd, Affiant.

Subscribed and sworn to before me this 17th day of
January, 1927. Sylvia Arnett, Notary Public.
My commission expires January 31, '29. (Seal.)

[File endorsement omitted.]

[fol. 66] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF C. C. WARREN—Filed January 19, 1927

STATE OF OKLAHOMA,
Creek County, ss:

C. C. Warren being first duly sworn deposes and says:

That he has been a resident of Sapulpa since the year 1903; that for several years prior to the time he came to Sapulpa and for several years thereafter he was in the employ of the Frisco Railroad Company on its Oklahoma line running into Sapulpa from Afton and the northeast.

Affiant further says that the said St. Louis and San Francisco Railroad Company in the year 18— built its line of railroad into what is now northeastern Oklahoma, then the Indian Territory; that the terminus of said run at that time was the Town of Vinita; that thereafter in the year 18— said line of railroad was extended south across the Arkansas River to Red Fork, and a short time thereafter was extended to the Town of Sapulpa; that said extension was made across the Arkansas River to the south for the purpose of taking care of the considerable cattle industry, which had then grown up south and west of the Arkansas River in the then Indian Territory, and the Territory of Oklahoma; that Sapulpa became the terminus of said road and so remained the terminus of said road until the year 1898 and became the most important shipping point on said road in the Indian Territory; that Sapulpa remained the terminus of said road until in the year 1898, when said railroad company extended its line to Oklahoma City; that up until this time said railroad had made but small outlay in the way of roundhouse, yards and other terminal facilities; that in the year 1900 said railroad company, through its president, general manager and other managing officials represented to the Town Officials of the Town of Sapulpa and to its citizens that in the event the Town of Sapulpa and its citizens would procure the right-of-way through the eastern portion of said town and for some 7 miles to the south and further procure additional grounds for building of yards, shops, roundhouse and other terminal facilities for said railroad, that the said railroad company would

[fol. 67] extend its lines from Sapulpa south through the Indian Territory across Red River to Texas, and that furthermore it would establish its shops, roundhouse and other division facilities at Sapulpa. That accordingly at the instance of said railroad company the Town of Sapulpa closed up all streets running north and south across the town, for a distance of one-half mile on either side of the main business section of the town and two streets running east and west through said town; in furtherance of said agreement with said railroad company, said town and its said citizens procured the right-of-way through said town and for some 7 miles to the south thereof, wholly at the expense of said town and of said citizens; that said citizens further gave to said company, free of cost to it, some 20 acres of ground for additional terminal purposes.

Affiant further states that though plans were made and submitted in 1902 by said company for the enlargement of its roundhouse, shops, yards and other facilities, said company had made meager improvements as late as 1907; that thereafter in about 1909, while said company was still adding to its terminal facilities, the president of said company made representations to the citizens of Sapulpa, that unless there was provided an adequate water supply, sufficient to meet the contemplated needs of said railroad company for its enlarged terminal facilities, that the said enlarged plans could not be carried out; that accordingly said town formulated plans to erect additional water facilities at a cost of about \$100,000.00 and submitted said proposed plans to the officials of said company; that upon said plans being submitted the said officials raised objections that said plans were entirely inadequate and requested that a survey be made by disinterested engineers, which was accordingly done and the plans of said engineer which called for expenditure of about \$235,000.00 were accepted and the water plant constructed, which cost said city the sum of \$235,000.00; that it became necessary for the city of Sapulpa to vote bonds in order to meet said expenditure, all of which was well known to the Railroad Company through its managing officials.

[fol. 68] Affiant further states that he is informed and believes that since the construction of said additional water

works referred to in the preceding paragraph that the City of Sapulpa has spent a further sum of about \$50,000.00 in procuring additional facilities and such expenditure has been made through the insistence of the managing officials of the Frisco.

Affiant further states that he is informed and believes that the St. Louis-San Francisco Railway Company came into existence through a reorganization of the affairs of the St. Louis and San Francisco Railroad Company, who was the builder of said line of railroad as herein above set forth; that the St. Louis-San Francisco Railway Company is the beneficiary of all the expenditures of the City of Sapulpa made in behalf of said railroad and is, and has been, ever since it came into existence, profiting by the inconvenience that the City of Sapulpa and its citizens are being made to endure by virtue of the closing up of said streets as set forth hereinabove. That it has full knowledge of all the facts detailed above and has profited by said agreements made for its benefit.

Affiant further states that while he was yet in the employ of the Frisco Railroad Company, Mr. Gray, who was at that time filling the office of Vice-President of said company, urged and advised this affiant, as an employ- of the railroad company to purchase a home in Sapulpa and invest in the real estate in said town, and further told him that Sapulpa was the logical point for a division on said road and would remain a division point and general repair shop, and that the Frisco would continue to make large improvements at said point; that your affiant, in reliance upon said advice, purchased a home in said town and became the holder of considerable real estate therein; that affiant knows that such advice was given to other employes of the Frisco Railroad Company, and that the managing officials of said company have frequently urged and advised the employes to purchase and build homes in Sapulpa; that accordingly many employes of said company have invested in homes and other real estate in the Town of Sapulpa; that more [fol. 69] than 75 per cent of the employes of said company own their own homes in said town.

Affiant further states that if the division point is removed from Sapulpa to West Tulsa, that it would necessitate the removal of most of said employes from Sapulpa and would

necessarily cause them to have to sell their homes; that said homes and said real estate could not be sold except at a tremendous sacrifice, owing to the fact that the removal of said terminal would cause property values in Sapulpa to greatly depreciate; that there are some 700 employes of said Frisco living in Sapulpa; that they, together with their families comprise about 3,000 of Sapulpa's population of 12,000; that many of the employes of said company are getting well along in years, and that it would be an especial hardship upon the old men among said employes to compel them to give up their homes which they have spent the better part of a life time in building.

Affiant further states that the employes of said railroad company are resentful of the attempt of the Frisco Railroad Company to remove the terminal from Sapulpa; that said employes are objecting to said move, not only because of the great loss they would incur by having to sell their property at a great sacrifice, but on the further grounds that in changing said division point the Frisco is bringing about the breach of a contract, which it has with the several brotherhoods of railroad men, whereby it is agreed that Sapulpa shall be the terminal point on said road; that a breach of said contract by the company is regarded by said employes as a serious offense and will be resented not only by the employes of Sapulpa Division of said railroad, but by the employes of said railroad over its whole system and will, almost inevitably, lead to serious labor disturbances and thus seriously impair the operation of said railroad system, if in fact it does not bring about an actual disruption of the business of said railroad company.

Affiant further states that he has spent 30 years of his life as an employee of various railroads, most of which time he was engaged in that branch of railroading which has to do with the movement of trains; that he has at different [fol. 70] times held the positions of switchman, brakeman, freight conductor and yard master; that as conductor he has run freight trains out of the Sapulpa division; that he has been yard master at Sapulpa, Monett, Missouri, and other places; that affiant is well acquainted with the yards, machine shops and other facilities at Sapulpa, and other

terminal points on the Frisco Railroad, and other railroads as well; that Sapulpa is the logical point for the location of the roundhouse, machine shops and other necessary terminal facilities; that the logical distance between terminal points is about 100 miles; that it is 101 miles from Sapulpa to Oklahoma City, where there is a division point on the Oklahoma City Branch of said road; that it is 101 miles to Francis, Oklahoma, where there is a division point on the Red River Branch of said road; that it is 90 miles from Sapulpa to Afton, where there is a division point on said road; that the location of the terminal which is now at Sapulpa, at West Tulsa, would necessitate a "double haul" of all passenger and freight traffic, which comes from the Red River branch of said road to the Oklahoma City branch and of all traffic from the Oklahoma City branch to the Red River branch; that a large amount of traffic, both freight and passenger from said Red River branch passes over to the Oklahoma City branch at Sapulpa; that a large portion of the traffic from the Oklahoma City branch of said road passes over to the Red River branch at Sapulpa; that it would entail the loss of thousands of dollars per year to thus "double haul" said freight and passengers from Sapulpa to West Tulsa and back again; that it would be impracticable and unprofitable under the present eight-hour law to attempt to lengthen out the terminals on said road.

Affiant further says that the Frisco terminal yards at Sapulpa are well situated as any yards which said company could make at West Tulsa; that said yards at Sapulpa are not on a curve but that the same are on straight lines; that it is not a fact that a hill on the north side of said yards prevent their enlargement; that there is ample ground to the west of said yards parallel with the Oklahoma City [fol. 71] branch of said line for the purpose of all necessary extensions; that said switch lines can be extended at least one mile further than at the present with comparatively small cost; that the yards could be enlarged at Sapulpa to meet any necessary and larger demands of said road at a much less cost than like enlargement could be made at West Tulsa; that there is ample level land along the line of rail-

road to the north and east of Sapulpa for the establishment of any necessary switch yards that might be needed for terminal purposes; that said land can be procured at a very reasonable price.

Affiant further states that the yards of the Frisco at West Tulsa are subject to overflow from the Arkansas River; that this affiant has on several occasions seen the tracks of said company flooded from the hill just north of the Red Fork nearly to the bridge of said company across the Arkansas at West Tulsa; that the flood waters stand stagnant for many weeks west of the yards of said company at West Tulsa; that West Tulsa is located in the bottoms of the Arkansas River and is not a desirable residential town; that this affiant is reliably informed that most of the employees of the Frisco at West Tulsa live in either Red Fork or Tulsa.

Further affiant saith not.

C. C. Warren, Affiant.

Subscribed and sworn to before me this 18th day of January, 1927. Sylvia Arnett, Notary Public.
My commission expires January 31, 1929. (Seal.)

[File endorsement omitted.]

[fol. 72] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF F. E. LAWRENCE—Filed January 19, 1927

STATE OF OKLAHOMA,

County of Creek, ss:

F. E. Lawrence, being duly sworn, deposes and says:

That he is a civil engineer by profession, being a graduate of School of Engineering of the University of Missouri; that he has had twelve years practical experience in his profession; that in May 1922, he became city engineer of the City of Sapulpa; in which capacity he acted until in May 1923, when he became City Manager of the City of Sapulpa, which position he still holds.

Affiant further states that in the year 1923, owing to serious complaint made by engineers for the Frisco Railroad Company, relative to the amount of *sale* water coming into the reservoir of the Sapulpa water System and thus to the tanks of the railroad company and the resulting injury to the boilers of the company's engines, the City of Sapulpa set about to provide the railroad with water as nearly free from minerals as possible; that accordingly the City made an additional expenditure to the amount of about seventeen thousand dollars in raising its dam on Euchee Creek, and purchasing additional lands covered, by reason of said dam's being raised; that thereafter in the year 1924 said City, in a further effort to satisfy the demands of the engineers of the said railroad company built an additional dam on Euchee Creek at an additional cost of approximately \$10,000.00; that as a result of these expenditures the City has procured an ample supply of water for said railroad company; that the water now supplied to said railroad company is as suitable for use as either Spavinaw or Shell Creek Water, which the company uses at West Tulsa.

Affiant further states that the City of Sapulpa furnishes said water to said railroad company at a flat rate of ten cents per thousand gallons; that said price is actually below the cost of delivering same; that the actual cost of delivering water in Sapula is about seventeen cents per thousand gallons, which sum includes the cost of pumping, interest on bonds, depreciation on plant, etc.

Affiant further says that from the books of the City of Sapulpa, which books are accurate, from the first of June, [fol. 73] 1926, to the 31st day of December, 1926, the City of Sapulpa has delivered to said railroad company at Sapulpa, 81,388,000 gallons of water at a cost of 10 cents per thousand gallons, or a total cost of \$8,138.80; that during said period of time said City furnished to all consumers, including the Frisco, a total of 254,614,000 gallons of water; that the total revenue from the water supplied to all patrons including the Frisco for said period of time amounted to the sum of \$45,214.62; that while the Frisco uses 31.96 per cent of all water supplied by the Frisco, they pay but about 18 per cent of the whole revenue derived therefrom; that while affiant has not made accurate computations for all of the years he has been with the City of

Sapulpa the above figures represent about the relative condition for all of said period of time since 1923, in other words, since 1923 the Frisco has been using practically a third of the water supplied by the City of Sapulpa and has been paying but about 18 per cent of the revenue derived from sale; and that the cost of delivering said water through said period of time from 1923 to date has been about the same as for said seven months from June 1, 1926, to December 31, 1926, or about 17 cents per thousand gallons.

Further affiant saith not.

F. E. Lawrence, Affiant.

Subscribed and sworn to before me this 18th day of January, 1927. Sylvia Arnett, Notary Public.
My commission expires January 31, 1929. (Seal.)

[File endorsement omitted.]

[fol. 74] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. M. WATCHORN— Filed January 19, 1927

STATE OF OKLAHOMA,
County of Creek, ss:

H. M. Watchorn, being duly sworn, deposes and says:

That he is a resident of Sapulpa and has been since the year 1901; that from 1901 to 1904 he was roadmaster for the Red River Division of the Frisco Railroad Company; that in 1904 he resigned his position with the Frisco and became actively identified with the affairs of Sapulpa; that in 1905 he was elected mayor of the Town of Sapulpa; that ever since said time he has kept in close touch with the development of the City of Sapulpa, and has especially kept in touch with the relations between the City of Sapulpa and the Frisco Railroad.

Affiant further says that while he was in the employment of said company, in the capacity of roadmaster, Mr. Gray, who was at that time general manager of the Frisco Railroad System, in a conversation with reference to a possible

change of the division point from Sapulpa to West Tulsa, told this affiant that no such move would be made, and further advised this affiant to buy a home in Sapulpa; that this affiant shortly thereafter, in reliance on said advice made considerable expenditure in the purchase of a home in Sapulpa; that your affiant has been reliably informed that similar advice and representations have been made by the managing officials of said company to other employees of the Frisco at Sapulpa; that many of such employees have acted on such advice and *has* bought homes at Sapulpa; and that more than seventy-five per cent of such employees now own their homes in Sapulpa.

Affiant further says that along about the year 1905, the officials of the Frisco demanded that Main Street be closed across the Frisco tracks and yards; that at about the same time the question of furnishing adequate water supply for the use of the Frisco was also being pressed by said officials; that these negotiations were usually carried on by the Frisco through Mr. Gray, who was General Manager of said railroad; that he urged the closing of said streets and the furnishing of adequate water as a necessity for the maintainance of the terminals at Sapulpa, and insisted [fol. 75] that the closing of said streets and the furnishing of water was absolutely necessary to the further enlargement of the terminal facilities of said road; that at all times the City of Sapulpa and its citizens have met the demands of said officials; that the City of Sapulpa has never made any change in its water facilities without first taking the matter up with the managing officials of the Frisco; that the first bond issue for water improvements came along about 1904 or 1905; that at that time the plans were enlarged at the suggestion of the officials of the Frisco; that this first issue of bonds for water improvements amounted to \$25,000.00; that thereafter, and in about 1908 or 1909, the Frisco demanded more water; that again the matter was taken up with the officials of the company; that the city proposed a plan which required an expenditure of about \$100,000.00, which would have provided ample water for the City of Sapulpa and its consumers; that when said plans were submitted to the Frisco officials they were, by such officials, declared insufficient; that said officials in turn demanded improvements which called for an expenditure of \$235,000.00;

that again the City of Sapulpa voted bonds for the amount required and built the facilities demanded; that subsequent to that time, the City has incurred at the instance of said company at different times additional expense for increased water facilities totaling about \$50,000.00; that such additional expenditures last mentioned, were not made for the needs of Sapulpa and its citizens, but for the Frisco Railroad Company.

Affiant further states that on many occasions since he has been a resident of Sapulpa, there has been agitations through the press of Tulsa for the removal of the division from Sapulpa to West Tulsa; that usually on such occasions the citizens of Sapulpa would appoint a committee to go to St. Louis and interview the president and other managing officials of the Frisco with reference to such proposed change; that your affiant served on two such committees at different times; that on those occasions the committee [fol. 76] was assured by such officials that there was no intention on the part of the officials to remove said terminals, shops and other facilities, for the reason that said Sapulpa terminal was at its logical place.

Affiant further says that he is familiar with the yards, shops and other facilities at Sapulpa; that said yards are well located; that there is plenty of room for extension to the west, and that the yards can be extended to the west for a mile, if necessary, at a comparative small expenditure; that there is also ample room for a yard east and north of the present passenger station, along the tracks of the company; that said land is to be had at a small sum and is comparatively level, and now has no improvements of any consequence on it; that in the opinion of your affiant Sapulpa is the logical point for the terminal, owing to its relative distance to other terminals to the north, south and west; and that both freight and passenger service can be more economically handled by operating with Sapulpa as a terminal point rather than West Tulsa.

Affiant further states that the yards of said company at West Tulsa are subject to overflow; that he has on several occasions seen the tracks of the Frisco Railroad Company under water from the hill just north of Red Fork almost to the bridge across the Arkansas at West Tulsa; that the overflow water stands stagnant for weeks after floods near the yards of said company in West Tulsa.

Affiant further says that West Tulsa is very undesirable as a location for a residence; that your affiant is reliably informed that very few of the employees who work for the Frisco at West Tulsa, live in West Tulsa, most of them living either in Red Fork or Tulsa.

Further affiant saith not.

H. M. Watchorn Affiant.

Subscribed and sworn to before me this 17th day of January, 1927. Sylvia Arnett, Notary Public.
My commission expires January 31, 1929. (Seal.)

[fol. 77] [File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. C. HUGHES ET AL.—Filed January 19, 1927

STATE OF OKLAHOMA,

County of Creek, ss:

H. C. Hughes, W. B. Key, W. A. Courtney, R. T. Shearer and E. B. Smith, being first duly sworn upon their oaths, say:

During the month of December, 1925 we were serving upon the Railroad Committee of the Chamber of Commerce of Sapulpa, Oklahoma, and because of rumors at that time that the St. Louis & San Francisco Railway Company was considering the removal of the terminals from Sapulpa said committee made an engagement with Mr. J. M. Kurn, President of said railway company at his office in the City of St. Louis, and the said committee did meet with Mr. Kurn on December 12, 1925. H. C. Hughes was Chairman of said committee. At the conference with Mr. Kurn the Committee suggested to him that the rumors of the proposed change of the location of the terminals, and removal of the same from Sapulpa had an injurious effect upon the business conditions of Sapulpa, and that said committee had arranged the conference in order to ascertain whether the rumor was well founded. Mr. Kurn, in substance, made the following statement:

“There is no justification for the rumor; when an important move of that nature is to be made publicity of the same would naturally be given from the executive officers. In my judgment there will never at any time be employed by the Frisco at Sapulpa fewer men than are now employed. Sapulpa is the logical place for the terminals now located there.”

Mr. Kurn also stated that the company was considering the enlargement of the terminals and the committee advised him that the Sapulpa Chamber of Commerce had created an industrial fund of \$100,000, and that the Chamber of Commerce would be glad to render financial assistance in acquiring any additional land needed. Mr. Kurn informed the committee that while the railway company was considering the purchase of additional lands that it [fol. 79] would be against the interests of the company to give publicity of that fact because it might result in large speculations in lands which were desired and cause the land to be valued at larger prices than the real worth of the same. In general, the whole effect of the conference with Mr. Kurn was that there was not reason for any anxiety on the part of the citizens of Sapulpa as to the removal of the terminals, Sapulpa being the logical place for the terminals then located there.

H. C. Hughes, W. B. Key, Wm. A. Courtney, R. T. Shearer, E. B. Smith.

Subscribed and sworn to before me this 18th day of January, 1927. Era I. Marler, Notary Public. My commission expires April 15, 1930.(Seal.)

[File endorsement omitted.]

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed January 19, 1927

This matter coming on for hearing on plaintiff's application for a temporary injunction on this 19th day of January, 1927, before the Honorable Arba S. Van Valkenburgh,

Circuit Judge for the Eighth Circuit, and the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, pursuant to the order heretofore on the 11th day of January, 1927, made by the Honorable Franklin E. Kannamer, District Judge, granting a temporary restraining order herein, and the plaintiff appearing by its attorneys, Stuart, Cruce & Franklin, and the defendants appearing by their attorneys, Judge C. B. Ames, Houston B. Tehee and T. L. Blakemore, and all parties having announced ready for hearing, said matter was by agreement submitted on affidavits introduced in evidence by both plaintiff and defendants, and the court having considered said affidavits and having heard argument of counsel both for plaintiff and defendants, is of the opinion that the temporary injunction prayed for by plaintiff herein should be in all things granted, and that the defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons similarly situated, and all persons acting with or by the authority of any of said defendants, should be enjoined until further order of this court from proceeding further in a certain action pending before the Corporation Commission of the State of Oklahoma wherein the said J. F. Lawrence and C. C. Taylor are complainants and the St. Louis-San Francisco Railway Company is defendant, said cause being cause No. 2812 of the Corporation Commission of the State of Oklahoma, which said action has [fol. 81] for its purpose the prevention on the part of the said St. Louis-San Francisco Railway Company from removing its shops and division point from the City of Sapulpa and from putting into effect certain changes in the runs of its trains according to its schedule about to be put into effect by said railway company.

Wherefore, it is ordered, adjudged and decreed that said defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Children, individually and as members of the Corporation Commission of the State

of Oklahoma, and all persons similarly situated, and all persons acting with them, their agents, servants, employees and all persons acting by or under their authority or the authority of any of them, and all persons for whom the said J. F. Lawrence and C. C. Taylor appeared in the said above described cause so pending before the Corporation Commission of the State of Oklahoma, be and all of which are hereby enjoined and restrained from prosecuting, hearing or conducting or permitting a hearing to be had, or taking or permitting any further proceedings to be had in the above described cause of action now pending before the Corporation Commission; that said defendants, and each and all of them, are hereby further restrained and enjoined from making promulgating or enforcing, or causing to be made, promulgated or enforced, any order prohibiting the above named plaintiff from removing any of its shops or appurtenances thereto, its division point or any part thereof, or from changing the run of any of its trains named in the schedule above referred to or changing the run of any of the crews on said trains now in said schedule, or doing anything that will in any manner interfere with or prohibit plaintiff from removing its shops or any appurtenances thereto, or its division point or any part thereof, or in changing the run of any of its trains until the further order of this court.

It is the further order of this court that no proceedings had herein or by the Corporation Commission of the State of Oklahoma, or any order heretofore issued by said Corporation Commission, shall in any event prohibit plaintiff from putting into effect on the 23rd day of January, 1927, its train schedule above referred to herein.

This order is to become effective upon the filing by the [fol. 82] plaintiff and the approval thereof of the Clerk of this Court of a bond properly conditioned according to law in the sum of \$50,000.

Arba S. Van Valkenburg, Circuit Judge. Albert L. Reeves, District Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed
January 24, 1927

To the Honorable Franklin E. Kennamer, Judge of the District Court of the United States for the Northern District of Oklahoma:

The above named defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw, and C. C. Childers, individually, and as members of the Corporation Commission of the State of Oklahoma, feeling themselves aggrieved by the interlocutory injunction made and entered in this cause on the 19th day of January, 1927, do hereby appeal from said decree granting an interlocutory injunction to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal be allowed, that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said interlocutory injunction was granted, duly authenticated, may be sent to the Supreme Court of the United States sitting at Washington, under the rule in such cases made and provided. [fol. 84]

Your petitioners further pray that the proper order touching security be made without superseding the decree referred to, and they tender bond in such amount as the Court may require.

C. B. Ames, T. L. Blakemore, Attorneys for the Defendants J. F. Lawrence and C. C. Taylor. Edwin Dabney, Houston B. Teehee, Attorneys for the Defendants Edwin Dabney, Frank C. Carter, Fred Capshaw, and C. C. Childers.

Order Allowing Appeal

On this the 24 day of January, 1927, the above named defendants presented their petition for appeal, and upon consideration, it is ordered that the appeal be and the same

is hereby allowed upon the giving of a bond for costs, as required by law, in the sum of five hundred dollars.

F. E. Kennamer, Judge of the United States District Court for the Northern District of Oklahoma.

[File endorsement omitted.]

[fol. 85] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 24, 1927

Now, ~~on~~ this 22nd day of January, 1927, come the above named defendants, by their solicitors, and say, that the interlocutory injunction entered in the above cause on the 19th day of January, 1927, is erroneous and unjust to the defendants for the following reasons:

1. The Court erred in granting the interlocutory injunction against the defendants in said cause.
2. The Court erred in holding that the Act of the Legislature of 1917, pleaded in the bill of complaint in said cause, is in violation of the Constitution of the United States, and void.

Wherefore, the defendants pray that said decree granting an interlocutory injunction be reversed.

C. B. Ames, T. L. Blakemore, Attorneys for the Defendants J. F. Lawrence and C. C. Taylor. Edwin Dabney, Houston B. Teehee, Attorneys for Defendants Edwin Dabney Frank C. Carter, Fred Capshaw and C. C. Childers.

[File endorsement omitted.]

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PRÆCIPE—Filed January 24, 1927

To St. Louis-San Francisco Railway Company, complainant:

You will please take notice that the above named defendants and appellants, will on the 24th day of January, 1927, file with the Clerk of the above named court, together with proof of acknowledgment of service of the same, a præcipe for the portions of the record to be incorporated in the transcript on appeal, a copy of which præcipe is hereto attached and made a part of this notice.

Dated this 22nd day of January, 1927.

J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants and Appellants, by Edwin Dabney, Houston B. Teehee, T. L. Blakemore, & C. B. Ames, Their Counsel.

[fol. 87] Due and timely service of the foregoing notice, together with copy of præcipe attached thereto, is acknowledged to have been made, and is accepted this 22nd day of January, 1927.

St. Louis-San Francisco Railway Company, by
Stuart, Cruce & Franklin, Its Attorneys.

[File endorsement omitted.]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed January 24, 1927

To the Clerk of the District Court of the United States for
the Northern District of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause, you are hereby notified as follows:

First

That the appellants elect to have the record herein printed under the supervision of the clerk of the Supreme Court of the United States, and under the rules of that court.

Second

That you will include in the record and transcript only such parts as are herein mentioned, omitting all other parts of the record, that is to say:

(1) The original bill of complaint filed in said cause.

(2) The affidavits filed in said cause by the complainant on the 19th day of January, 1927, towit: the affidavits of James E. Hutchison, C. T. Mason, H. W. Press, H. L. Norman and F. H. Shaffer.

(3) The affidavits filed in said cause by the defendants on the 19th day of January, 1927, to-wit: The joint affidavit of Fred Capshaw, Frank C. Carter and C. C. Childers; and the affidavits of J. A. Boyd, C. C. Warren, F. E. Lawrence, H. M. Watchorn and H. C. Hughes, W. B. Key, W. A. Courtney, R. T. Shearer and E. B. Smith.

[fol. 89] (4) The decree entered in said cause on the 19th day of January, 1927, granting an interlocutory injunction.

(5) The petition for and allowance of the appeal.

(6) The assignment of errors.

(7) Bond on appeal.

(8) Citation on appeal.

(9) Notice of præcipe and this præcipe.

Edwin Dabney, Attorney General; Houston B. Teehee, Assistant Attorney General; T. L. Blake-more, C. B. Ames, Attorneys for Defendants and Appellants.

All formalities of the time and manner of serving the aforesaid præcipe are waived, and the appellee agrees that the præcipe may be filed; that it calls for all papers which should become a part of the record and that the same may be incorporated in the transcript on appeal without further notice to us.

Dated this 22nd day of January, 1927.

St. Louis-San Francisco Railway Company, by
Stuart, Cruce & Franklin, Its Attorneys.

[File endorsement omitted.]

[fols. 90 & 91] Bond on appeal for \$500, approved and filed January 24, 1927, omitted in printing.

[fols. 92-93a] Citation, in usual form, showing service on Stuart, Cruce & Franklin, filed January 24, 1927, omitted in printing.

[fols. 94 & 95] Præcipe for transcript of record omitted; printed side page 88 ante.

[fol. 96] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 97] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS TO PRINT THE ENTIRE RECORD—
Filed February 15, 1927

In compliance with the rule the appellants respectfully state the following points on which they intend to rely:

The errors assigned in this cause are that the court erred in granting the interlocutory injunction, and that the court erred in holding that the act of the legislature of Oklahoma of 1917, herein involved, is a violation of the Constitution of the United States. In presenting these assignments of error the appellants will rely upon the following propositions:

1. This action is prematurely brought.

The act of the legislature in question provides that, after a railroad company has maintained its shops and terminals at any given point in the state for a period of five years, that it cannot remove them until after presenting an application to the Corporation Commission and securing an order permitting it to do so. The appellee in this cause has not presented such an application, has not been denied permission to move its terminals, but by this action is forcing the initial hearing upon the Federal courts instead of the Corporation Commission.

2. The statute involved is a valid exercise of the police power of the state, being enacted for the preservation of the health, safety, and convenience of the railroad employees, of the communities in which shops and terminals [fols. 98-99] are located, and of the general public.

3. The statute involved is a valid exercise of the power of the state to regulate railroads, there having been no assertion of the national power over the subject.

4. The statute involved is not a regulation of interstate commerce, and if it affects interstate commerce at all only does so remotely and indirectly.

In view of the fact that the interlocutory injunction was heard only on affidavits, the appellants request that the entire record be printed, as in the opinion of appellants the entire transcript on file in this cause is necessary for the

proper consideration of the points on which the appellants rely.

— — —, Attorney General of Oklahoma; — — —, Assistant Attorney General of Oklahoma; C. B. Ames, T. L. Blakemore, Attorneys for Appellants.

The undersigned attorneys for the appellee hereby accept service of a copy of the above entitled paper, and concur in the request to have the entire transcript printed, waiving the time allowed by the rules for designating additional parts of the record.

Stuart, Cruce & Franklin, Attorneys for Appellee.

[fol. 100] [File endorsement omitted.]

Endorsed on cover: File No. 32,461. N. Oklahoma D. C. U. S. Term No. 894. J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General, etc., et al., appellants, vs. St. Louis-San Francisco Railway Company. Filed February 10th, 1927. File No. 32,461.

(5066)